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ISSUE DATE: OCTOBER 20, 2008

RULE ADOPTIONS

COMMUNITY AFFAIRS
NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

40 N.J.R. 5965(a)

Adopted Amendments: N.J.A.C. 5:97-1.4, 2.2, 2.3, 2.4, 2.5, 3.2, 3.4, 3.5, 3.6, 3.7, 3.13, 3.14, 3.16, 4.1, 4.3, 4.5, 5.1, 5.2, 5.3, 5.4, 5.6, 6.2, 6.4, 6.5, 6.6, 6.7, 6.9, 6.10, 6.11, 6.14, 8.1, 8.3, 8.7, 8.8, 8.9, 8.10, 10.2, 10.4 and 10.5, and N.J.A.C. 5:97 Appendices A, C, D, E and F

Adopted New Rules: N.J.A.C. 5:97-3.17, 3.18, 3.19, 3.20, 5.7 and 5.8

Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning on June 2, 2008

Proposed: June 16, 2008 at 40 N.J.R. 3374(a).

Adopted: September 22, 2008 by the New Jersey Council on Affordable Housing, Lucy Vandenberg, Executive Director.

Filed: September 23, 2008 as R.2008 d.316, with substantive and technical changes not requiring additional public comment and notice (see N.J.A.C. 1:30-6.3) and with the proposed amendments to N.J.A.C. 5:97-6.4(b)8 and 9 and 6.13 not adopted.

Authority: N.J.S.A. 52:27D-301 et seq.

Effective Date: October 20, 2008.

Expiration Date: June 2, 2013.

Summary of Public Comments and Agency Responses:

The Council received 105 sets of written comments and public statements from the following individuals or organizations:

- 1. Baldanza, Lou, Baldanza Construction, Park Ridge, NJ
- 2. Banisch, David, on behalf of Chester Borough, NJ

40 N.J.R. 5965(a)

- 3. Banisch, David, on behalf of Pemberton Borough, NJ
- 4. Bayer, Andrew, on behalf of Hillsborough Township, NJ
- 5. Bayer, Andrew, on behalf of the Borough of Tinton Falls, NJ
- 6. Bell, James N., on behalf of Mantua Township, NJ
- 7. Bernard, Art, on behalf of the New Jersey Builders Association, Robbinsville, NJ
- 8. Biedzynksi, Kenneth W., on behalf of Marlboro Township, NJ
- 9. Bishop, Shirley M., on behalf of Princeton Borough, NJ
- 10. Brancheau, Blais, Newton, NJ
- 11. Brook, Richard A., Florence Township, NJ
- 12. Bruno, James P., Pine Brook, NJ
- 13. Cantu, Peter A., Mayor, Township of Plainsboro, NJ
- 14. Chadwick, John, on behalf of Warren Township, NJ
- 15. Chase, Theodore Jr., Chair, Franklin Township Planning Board, Somerset County, NJ
- 16. Coalition for Affordable Housing and the Environment, Trenton, NJ
- 17. Cramer, Richard, on behalf of Manalapan Township, NJ
- 18. Cramer, Richard, on behalf of the Borough of Eatontown, NJ
- 19. Cramer, Richard S., on behalf of Linden City, NJ
- 20. Cranbury Township Committee, Cranbury, NJ
- 21. Crowley, Paul B., Mayor, Borough of Franklin, NJ
- 22. Cruz, Albert E., on behalf of Rocky Hill Borough, NJ
- 23. Cruz, Albert E., on behalf of Watchung Borough, NJ
- 24. Dahl, Stephen M., K Hovnanian Homes, Edison, NJ
- 25. Dougherty, Linda, Edgewater Park Township, NJ
- 26. Dressel, William, New Jersey League of Municipalities, Trenton, NJ
- 27. Federico, Melody, NewBridge Services, Inc., Pompton Plains, NJ
- 28. Flannery, Patricia, Mayor, Bridgewater Township, NJ
- 29. Frankford Township Committee, Frankford, NJ
- 30. Frey, Wilma, New Jersey Conservation Foundation, Far Hills, NJ

40 N.J.R. 5965(a)

- 31. Furey, Leah, on behalf of Voorhees Township, NJ
- 32. Goldin, Steven E., Intercap Holdings, Princeton, NJ
- 33. Goldschlag, Bonnie, Monmouth County Planning Board, NJ
- 34. Gundrum, J. Eric, on behalf of Wildwood City, NJ
- 35. Hantson, Michael A., Town of Dover, NJ
- 36. Healey, Mark A., Township of Franklin, Somerset County, NJ
- 37. Healy, Jerramiah T., Mayor, Jersey City, NJ
- 38. Henry, Neil, Mayor, Borough of Mendham, NJ
- 39. Hersh, Pamela, Princeton HealthCare System, Princeton, NJ
- 40. Holmqvist, Donna, on behalf of the Borough of Woodcliff Lake, NJ
- 41. Holtaway, Robert F., Mayor, Bedminster Township, NJ
- 42. Hopewell Township Committee, Cumberland County, NJ
- 43. Housing and Community Development Network of New Jersey, Trenton, NJ
- 44. Howard, Heather, Commissioner, Department of Health and Senior Services, Trenton, NJ
- 45. Jedziniak, Michael, on behalf of Oceanport Borough, NJ
- 46. Jedziniak, Michael, on behalf of Pine Beach Borough, NJ
- 47. Jersey City Affordable Housing Coalition, Jersey City, NJ
- 48. Jezierny, Karen, Princeton University, Princeton, NJ
- 49. Kantowitz, Jeffrey, Goldberg, Mufson & Spar, West Orange, NJ
- 50. Kinsey, David, Kinsey & Hand, Princeton, NJ
- 51. Koenig, Stuart, Stickel, Koenig & Sullivan, Cedar Grove, NJ
- 52. Langevin, Paul, Health Care Association of New Jersey, Hamilton, NJ
- 53. Lefsky, Marta, Township of Woodbridge, NJ
- 54. Lelie, Kendra, on behalf of the Borough of Rockleigh, NJ
- 55. Liggett, Larry, New Jersey Pinelands Commission, New Lisbon, NJ
- 56. Lohr, Janice, Delanco Township, NJ
- 57. Mannington Township Committee, Mannington, NJ
- 58. Mauger, Dave, Cranbury, NJ

40 N.J.R. 5965(a)

- 59. McGuinness, Michael, National Association of Industrial and Office Properties (NAIOP), New Brunswick, NJ
- 60. McGuire, Dan, Homeless Solutions, Morristown, NJ
- 61. Messina, Peter A., Bernards Township, Basking Ridge, NJ
- 62. Mironov, Janice S., Mayor, Township of East Windsor, NJ
- 63. Moorestown Township Council, Moorestown, NJ
- 64. Morgan, Charles C., West Windsor, NJ
- 65. Morgan, Ronald, Esq., Parker McCay P.A., Marlton, NJ
- 66. Mouber, Michael L., on behalf of Westampton Township, NJ
- 67. Murphy, Martin F., on behalf of the Borough of Mountain Lakes, NJ
- 68. Norman, Christopher, Township of Mount Laurel, NJ
- 69. Pantel, Glenn S., on behalf of Erickson Retirement Communities, NJ
- 70. Rackin, Gregg, Hunterdon County Planning Board, Flemington, NJ
- 71. Readington Township Committee, Readington, NJ
- 72. Reiter, Caroline, on behalf of Hillsdale Borough, Oakland, NJ
- 73. Ricciardi, Rick, Marathon Engineering & Environmental Services, Inc., Swedesboro, NJ
- 74. Ritter, John, Cranbury Township, NJ
- 75. Rizzo, Paul R., on behalf of Raritan Borough, NJ
- 76. Russo, John F., Russo and Cassidy, LLC, Toms River, NJ
- 77. Sachau, Barbara, Florham Park, NJ
- 78. Secaucus Affordable Housing Board, Secaucus, NJ
- 79. Slaugh, Brian M., on behalf of Berlin Borough, NJ
- 80. Smith, Marianne, Township of Hardyston, NJ
- 81. Somerset County Planning Board, Somerville, NJ
- 82. Somerville Borough Planning Board, Somerville, NJ
- 83. Spector, Craig D., Peckar and Abramson, River Edge, NJ
- 84. Surenian, Jeffrey R., Jeffrey R. Surenian and Associates, Brielle, NJ
- 85. Surenian, Jeffrey R., on behalf of Egg Harbor Township, NJ
- 86. Surenian, Jeffrey R., on behalf of Atlantic Highlands Borough, NJ

- 87. Surenian, Jeffrey R., on behalf of Franklin Township, Gloucester County, NJ
- 88. Surenian, Jeffrey R., on behalf of Freehold Township, NJ
- 89. Surenian, Jeffrey R., on behalf of Harrison Township, NJ
- 90. Surenian, Jeffrey R., on behalf of Middletown Township, NJ
- 91. Surenian, Jeffrey R., on behalf of Rumson Borough, NJ
- 92. Surenian, Jeffrey R., on behalf of Summit City, NJ
- 93. Surenian, Jeffrey R., on behalf of Wall Township, NJ
- 94. Thomas, T. Andrew, Thomas Planning Associates, LLC, Brielle, NJ
- 95. Thoms, John A., Mayor, Borough of New Providence, NJ
- 96. Van Den Kooy, Peter, on behalf of Oldmans Township, NJ
- 97. Voyce, William, Mayor, Township of Tewksbury, Califon, NJ
- 98. Walsh, Kevin, Fair Share Housing Center, Cherry Hill, NJ
- 99. Watchung Borough Planning Board, Watchung, NJ
- 100. Watkins, Matthew, South Brunswick Township, NJ
- 101. Weidner, Thomas P., Cranbury, NJ
- 102. West Orange Township Council, West Orange, NJ
- 103. West Windsor Township, NJ
- 104. Wilson, John B., Association of Independent Colleges and Universities in New Jersey (AICUNJ), Summit, NJ
- 105. Zimmerman, P. David, Community Planning Consultant, Morristown, NJ

N.J.A.C. 5:97 General

COMMENT: COAH must provide further revisions to N.J.A.C. 5:96 and 5:97 to conform to the requirements and implementation of P.L. 2008, c. 46. Several of the procedural and substantive rules adopted by COAH on May 6, 2008 and the amendments thereto are no longer consistent with the Fair Housing Act (FHA). The rules that are now inconsistent with the FHA as revised by P.L. 2008, c. 46 must be modified and COAH cannot simply adopt the pending rules without conforming them to the requirements of P.L. 2008, c. 46. COAH should consider proposing such amendments as soon as practically possible and prior to adopting the rules as proposed on May 6, 2008.

RESPONSE: Amending the pending rule proposal to implement the recently enacted amendments to the Fair Housing Act is outside the scope of the Council's present rule proposal. P.L. 2008, c. 46 will be the subject of a future rule amendment.

COMMENT: Although the Township is aware that the proposed rules were introduced prior to the passage of A500, three are serious implications on a town's ability to meet its fair share obligation. The elimination of regional contribution agreements (RCAs) and the implementation of a Statewide nonresidential commercial development fee

will require numerous comprehensive revisions to the COAH rules. Due to A500 preventing municipalities from implementing growth share ordinances or other mechanisms for the provision of affordable housing for commercial development, the development fee is the only available mechanism. The revenue from those fees will not come close to equaling the cost of meeting the growth share obligation generated by new commercial development. This will allow the developer to walk out on a portion of their obligation and affordable housing will become an unfair financial burden on municipalities and local taxpayers.

RESPONSE: The comments are outside the scope of this rule proposal. P.L. 2008, c. 46 will be the subject of a future rule amendment.

COMMENT: The whole third round process has suffered from a court imposed lack of adequate time to verify the accuracy of the rules and formulae and the data on which they are based. The claims that the third [page=5967] round rules are compatible with sound planning practices and existing State development and redevelopment plans, smart growth and open space, farm and environment conservation plans are patently false--witness the latest fiasco with the incompatible requirements of COAH and the Highlands Act. New Jersey ranked 47th in competitiveness before the new third round rules and affordable housing legislation. The impact statements provided by COAH are inaccurate. There is a shortfall between the revenues provided by the new 2.5 percent fee and the cost of construction for each affordable housing. A shortfall of \$ 100,000 per unit Statewide for 115,000 units would result in an 11.5 billion dollar shortfall Statewide which must be paid by local property taxpayers including businesses. It is inconceivable, despite claims in the Register to the contrary, that these taxes on businesses will not result in job losses. It's also inconceivable that these taxes will have no effect on the emigration of people and businesses from the State, an impact which doesn't even seem to have been considered. As noted above, agricultural buildings are being assessed affordable housing fees even though they don't generate affordable housing requirements. How can that possibly have no impact on the agriculture industry? Farmers are outraged by this. The amended third round rules and the new legislation need radical revision to reflect sound planning principles and economic realities and the courts need to allow the time it will take to get this right.

RESPONSE: This comment is outside the scope of this rule proposal. The commenter should be aware that COAH will be issuing guidance to municipalities and other interested parties regarding the implementation of P.L. 2008, c. 46, which will also be the subject of a future rule amendment.

COMMENT: A top objective of fair housing is to give workers a reasonable opportunity to live near their jobs. However, local workers, such as police, firefighters and teachers, don't receive priority housing in their local communities. Additionally, despite their service, returning veterans don't receive priority for affordable housing, either. Furthermore, despite an increasing senior population, COAH rule changes reduce the opportunity to address the specific needs of seniors. Ironically, affordable housing policy and COAH rule changes will substantially increase property taxes for many workers, veterans and seniors who are already struggling to keep their heads above water. COAH rules also favor rental communities in contrast to the American Dream of home-ownership. COAH should set up a priority system for local workers such as police, teachers and others who are an integral part of the community. In addition, offering priority to returning veterans and to the seniors who built our communities is the right thing to do. Finally, encouraging "rent-to-own" communities will foster a commitment to the community and enable affordable housing residents to build equity toward the American Dream.

RESPONSE: The rules governing affirmative marketing, which require open, region-wide advertising of housing opportunities, are not proposed for change at this time as they are included in the Uniform Housing Affordability Controls (UHAC). Affirmative marketing is a basic requirement for all COAH units that are intended to address a municipality's growth share obligation. The Supreme Court, in the *Warren* decision, *In re Township of Warren*, 132 *N.J.* 1 (1993), invalidated residential preference for all units that meet the regional need and provided very specific guidelines on any residential preference. The proposed rules do not affect the standards of age restricted housing and therefore this comment is outside the scope of these rules. The reduction number of senior units permitted in a plan was a result of the January 2007 Appellate Division decision which did not approve the then proposed 50 percent allowance for age-restricted housing. These limitations on the crediting possible for senior units does not limit the community

from providing units to satisfy the demand in the area beyond the number that can be credited in a Fair Share Plan. The rules governing rental housing are designed to create greater opportunities for this housing, a type of housing which market developers have avoided because of lower economic returns and the long range commitment needed.

COMMENT: The social impact of COAH has been extremely negative. Truly low income seniors can't get places to live in COAH and there is a real need for senior housing which COAH does not address at all. Are seniors just supposed to die with COAH furnishing all these sites for illegal immigrants to live. Many seniors have no work income to qualify for COAH, why is that? The economic impact of this proposal is negative. The agricultural impact of this proposal is extremely negative. This is not smart growth at all.

RESPONSE: The Council thanks the commenter for her statement. The Council does not agree that fostering housing guidelines required by the Fair Housing Act and assisting in the creation of thousands of affordable units has a negative impact on the State. The rules do address age-restricted housing, but limit the amount "creditable" in any one housing plan. Towns may develop more units than those eligible for credit.

COMMENT: The growth share methodology should enable towns to manage affordable housing obligations through smart planning. However, retroactively imposing new rules is a contradiction of this logic. Towns like Cranbury will need new schools, more police and expanded infrastructure, in addition to construction costs that cannot be recouped retro-actively from builders. COAH rule changes should not be retroactive. Appropriate plans submitted prior to the rules changes should be granted substantive certification according to the rules in place at the time of submission. COAH should honor the plan submitted by Cranbury in 2005 that fully addressed Cranbury's anticipated affordable housing obligation, including an RCA with Perth Amboy.

RESPONSE: The growth share methodology is not proposed for revision in these amendments to the COAH rules, both as to substance or retroactive applicability; therefore, the comments are outside the scope of this rule proposal. However, the commenter should recognize that the rules under which the Cranbury plan was developed were found to be inadequate by the January 2007 Appellate Division decision, *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing*, 390 *N.J. Super.* 1 (App. Div. 2007), *certif. denied*, 192 *N.J.* 71 (2007); therefore, a new plan under the amended rules must be submitted to be considered complete. The Compliance Bonus proposed in this amendment does help ameliorate the housing programs put into place after the adoption of the first set of Third Round rules. Because the January 2007 Appellate Division decision, COAH was unable to act on RCA proposals or any housing plans until rules were amended. While the amended COAH rules continued to permit RCAs, the passage and signing (by the Governor) of P.L. 2008, c. 46, prohibits the use of the RCA mechanism.

COMMENT: COAH should propose rules that would address non-residential approvals granted pursuant to the growth share ordinances that are affected by P.L. 2008, c. 46, particularly in the case where a developer has complied with the growth share ordinance and has been issued a certificate of occupancy prior to July 17, 2008.

RESPONSE: The Council thanks the commenter for his remarks. P.L. 2008, c. 46 will be the subject of a future rule amendment.

COMMENT: There should be no illegal immigrants in any COAH housing. Regulations must provide that only American citizens are allowed to live in COAH housing. No people here on visas should be living in COAH housing. All citizenship papers must be investigated to be sure that only American citizens live in COAH housing.

RESPONSE: The rule comment is outside the scope of this proposal.

COMMENT: Jersey City has been and is committed to providing not only affordable but work force housing for our residents. We have requested that the regulations be re-drafted from an urban perspective. To our dismay, not only has that not occurred, but several key provisions of the amendments are more onerous, will further stifle development, and do not provide appropriate credits to units that are in fact affordable. I reiterate my previous provision that I cannot endorse these amendments as presently drafted. However, we are ready to work with COAH to develop an urban

housing policy that makes sense, especially in these challenging times for the real estate and financial sectors.

RESPONSE: The Council thanks the commenter for his statement and looks forward to working together with urban leaders to improve our policies and rules as they affect urban areas. The rules do address issues raised by urban municipalities, including waivers on addressing the entirety of rehabilitation components, providing a higher minimum gross densities for sales and rental units and amending the redevelopment mechanism rules to provide for bonus credits in redevelopment areas. Recently signed P.L. 2008, c. 46., previously known as Bill A500, [page=5968] contains a number of other provisions positively affecting urban areas and will be the subject of a future rule amendment.

COMMENT: One of the unfortunate aspects of COAH's rulemaking since 2003 is that COAH has created the impression that development creates an affordable housing obligation. The affordable housing obligation lies within the State's constitution and is a function of projected households. Development helps address the affordable housing obligation. In its responses to comments, COAH seems to be trying to re-educate the public that the affordable housing obligation is a municipal obligation and not an obligation of the private sector. Unfortunately, at 40 N.J.R. 2760, COAH uses the phrase, "While the developer is creating an affordable housing obligation . . . " This phrase is inaccurate and must be corrected. No developer is creating an affordable housing obligation. Any inclusionary developer is attempting to help the municipality address the municipal obligation that the Appellate Division has ordered COAH to allocate.

RESPONSE: The Council thanks the commenter for his comments, which are addressing perceptions of affordable housing and not the rules governing affordable housing. As an introduction to all COAH rules, materials and educational meeting and seminars, the foundations of a local government's constitutional obligations for providing a realistic opportunity for affordable housing are reviewed. However, under the growth share methodology, the municipal affordable housing obligation is in fact, generated, by actual market rate development. It is at the municipality's option to address that obligation through the imposition of inclusionary zoning requirements.

COMMENT: COAH must quantify the impact of its decisions to: allow each municipality to reduce its 1999-2018 housing obligation based on compliance with the 1987-1999 housing obligation (N.J.A.C. 5:97-2.4 and 2.5): allow each municipality to address its 1999-2018 housing obligation through the extension of controls on affordability pursuant to N.J.A.C. 5:97-6.14; and the various bonus credits it permits pursuant to N.J.A.C. 5:97-3.5 and 3.17 through 3.19.

RESPONSE: The Council cannot predict how many bonuses will be granted. The ability to seek compliance bonuses depends on the unique circumstances of a municipality's plan implementation as well as the specific components of its Fair Share Plan. For example, if a municipality chooses to seek other bonuses, such as rental bonuses, up to the 25 percent cap established under proposed N.J.A.C. 5:97-3.20(b), it would be ineligible for compliance or any other additional bonuses. Further, if at the time of plan evaluation pursuant to N.J.A.C. 5:96-10.1, the units receiving the bonus remain unbuilt, they would no longer be eligible for the compliance bonus. The ability to seek Smart Growth bonuses depends on unique municipal characteristics such as proximity to public transit, Planning Area and/or center designation, land use mix, and development patterns. Redevelopment bonuses are dependent on the extent to which redevelopment is a suitable mechanism for the production of affordable housing in a particular municipality. Similarly, it is not possible to quantify the impact of permitting the extension of expiring controls. This mechanism is just one of many available to municipalities to address an affordable housing obligation, and there is no way to predict which municipalities may choose it or to what extent they would use it as part of their Fair Share Plans. Comments regarding prior round unbuilt inclusionary developments are outside the scope of the rule proposal.

COMMENT: Tewksbury has consistently addressed its affordable housing obligations with a compliant Housing Plan Element (HPE) and Fair Share Plan (FSP). The township continued to exercise good faith in satisfying its Third Round obligation under the 2004 rules. The Tewksbury Township Planning Board responded to the December 2004 Third Round rules by adopting a Housing Plan Element on November 30, 2005. The Township Committee endorsed the Housing Element and the Township filed a timely petition for substantive certification before the December 2005 deadline. Tewksbury has met its affordable housing obligations in the past and will continue to find ways to meet its affordable housing obligations going forward. Using a range of tools, including an extremely successful accessory

apartment program, Tewksbury has provided for its fair share of the region's housing need. As the commenter proceeds forward, he will build on these tools to help keep Tewksbury the diverse and inclusive community it strives to remain and become. At the same time, the commenter urges COAH to assure that the assumptions upon which you rely are sound and that the data is reliable, so that the fair share responsibilities that you assign to Tewksbury and to all towns are truly fair.

RESPONSE: The Council appreciates the municipality's effort to plan for and meet its affordable housing obligation and notes that its methodology is fair and reasonable.

COMMENT: COAH should be steadfast with the policy that any affordable housing obligation imposed on a municipality should be based upon actual residential and non-residential growth. Many jobs have been lost, or will be lost, due to the closing of Fort Monmouth. Therefore, COAH should establish a pro-rata benchmark for each of the three constituent municipalities (Oceanport, Eatontown, and Tinton Falls)--based upon the most accurate job loss estimates--which protects each municipality from any job-growth related growth share obligations until the net gain of jobs achieved through redevelopment is greater than the net loss of jobs due to the closing.

RESPONSE: The Council is in the process of drafting a memorandum of understanding with Fort Monmouth Economic Revitalization Planning Authority (FMERPA) that recognizes the unique circumstances surrounding the base closure.

COMMENT: The closing of Fort Monmouth is a unique situation in New Jersey, which simultaneously creates many wonderful planning opportunities but also many unanticipated pitfalls. Therefore, close cooperation between the constituent municipalities and the relevant agencies is not only important, it is crucial to the success of this enormous redevelopment project. One key element of this success will be the generous sharing of data and information between the relevant agencies and the three municipalities. Unfortunately, however, subsequent to the closing of Fort Monmouth, many questions have been unanswered, which are negatively affecting the Borough's ability to analyze its Cycle III affordable housing obligation, crediting opportunities, and generally make sound planning decisions. In order to facilitate the Borough's ability to develop a cogent, thorough, and sensible affordable housing plan, COAH should make certain that it cooperates fully with the municipalities and that it closely cooperates with FMERPA, its sister agency. Failure to do so will almost certainly result in mistakes or, ultimately, failure of the project.

RESPONSE: The Council thanks the commenter for his observations and recommendations. The Council and staff will be developing a memorandum of understanding with this regional planning entity, FMERPA, that will outline the framework for our cooperative efforts and provides guidance for the decision making processes. This approach will greatly assist COAH as it works with the individual municipalities as they develop their respective housing plans.

COMMENT: Plainsboro would like to reaffirm that it became aware on March 14, 2008 that additional data is now available on the COAH website that explains how the county level projections were brought down to the local level. Because there is insufficient time to review the data and prepare an analysis prior to the March 22, 2008 deadline for comments to COAH, Plainsboro reserves the right to review the data using GIS, determine its validity, and request any necessary adjustment at a later date.

RESPONSE: This comment is outside the scope of this rule proposal, as the comment deadline mentioned was for a prior proposal.

COMMENT: The agency should conduct an economic analysis of the COAH regulations and not rely on the boilerplate language put forth in the Economic Impact statement. COAH's regulations will have a significant impact on the State's economy, on taxpayers and on the business community. At the very minimum, COAH owes it to the regulated community, that is, local governments, to fairly assess the impact on taxpayers. The citizens of our State deserve no less-particularly where, as here, the economic impacts are profound. In this regard, COAH's own regulations provide that the average costs needed to subsidize affordable units are \$ 161,000 per unit. Thus, a 115,000-unit

Statewide need represents a substantial economic burden even if municipalities could reduce the subsidy through reliance on less expensive compliance techniques. Moreover, the elimination of RCAs and the inefficiencies of inclusionary zoning--inefficiencies magnified by COAH regulations--have forced municipalities to dramatically increase their reliance on "municipally sponsored projects." Therefore, as [page=5969] difficult as it was before for municipalities to secure adequate financing for municipally sponsored projects, it will be far more difficult now. Indeed, municipalities will have to dramatically increase their funding for municipally sponsored projects. Instead of providing any analysis of the obvious ramifications to its regulations, COAH asserts that the regulations will have "a positive economic impact on municipalities . . ." If COAH is to make such statements, it needs to provide the analysis that supports it.

RESPONSE: The Council appreciates the commenter's concerns and observations. The Council does not believe its methodology will negatively affect New Jersey's economic growth. Under the provisions of the Fair Housing Act (FHA) and various Court decisions reviewing the FHA as well as other affordable housing issues, COAH is required to develop the rules and methodology for the allocation of low and moderate income housing needs. The Council has proposed a system which it believes will permit every municipality to meet its fair share of regional housing need. The Growth Share methodology will not disproportionately burden any one municipality. This approach links affordable housing obligation to the development of market-rate housing units or the creation of new jobs. In this way, all municipalities will be responsible for creating the same share (relative to growth) of affordable housing. COAH's methodology consists of three components- prior round, rehabilitation share and growth share. Municipalities have available a myriad of options for meeting their affordable housing obligations, of which inclusionary development is only one option. These options are described in N.J.A.C. 5:97-6. For instance, municipalities may undertake a municipally-sponsored construction project or an accessory apartment program. The Council's rules have always allowed municipalities to receive credit for existing affordable housing in accordance with its rules. It is inappropriate to base the total cost of meeting New Jersey's affordable housing goals on the average subsidy for replacing a unit in an inclusionary development. Units are provided in a number of ways, many of which do not require a cost equivalent to the cost of a payment-in-lieu amount. The total list of proposed mechanisms offers other choices for the delivery of affordable housing. One-hundred percent affordable development most certainly is a mechanism that reduces the cost of development based on grant, subsidy and tax credit programs. There are many funding sources other than the very competitive nine percent tax credit program, that are projected to provide billions of dollars that can be sought by the municipalities or for-profit and not-for-profit developers working with the towns. It has not been expected that development fees would "cover" the required subsidy needed to provide the housing created under growth share on a unit-for-unit basis. These revenues can be used in conjunction with other public and private sources.

COMMENT: On the subject of public subsidies, there is a comment and response that is particularly disturbing at 40 N.J.R. 2807. In response to a comment about public subsidies, COAH's response is that COAH cannot direct municipalities to seek specific funding sources for affordable housing developments. To the contrary, *Mount Laurel II* specifically mentions cooperation in receiving public subsidies as one of the affirmative measures required of municipalities. COAH has the power to require the use of money deposited in municipal affordable housing trust funds to create economically viable inclusionary developments. It has the power to direct municipalities to seek public subsidies. In fact, COAH ordered Denville to seek public subsidies to implement its affordable housing plan. COAH should not shrink from this power. It should use the power to produce affordable housing.

RESPONSE: While the comment is outside the scope of this rule proposal, the Council and staff will continue to encourage municipalities to use public subsidies to improve the opportunities to provide affordable housing. In the near future, COAH will be providing guidance on the availability of the many sources of funds for affordable housing programs. It is the Council's policy, as demonstrated by the current rules, to permit municipalities to select from a variety of mechanisms and other creative techniques to develop their plan but not to dictate the details of a plan.

COMMENT: In light of the elimination (through COAH regulations and the passage of P.L. 2008, c. 46) of various compliance methods, COAH should adopt a definitive written policy that it will not assign growth share obligations unless it is fully funded.

RESPONSE: The commenter's suggestion would be in violation of the Fair Housing Act and the Appellate Division decision of January 2007, *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing*, 390 *N.J. Super*. 1 (App. Div.) *certif. den.* 192 *N.J.* 71 (2007), COAH is responsible for defining present and prospective affordable housing need based upon present and future low- and moderate-income household formation. COAH is created as a voluntary administrative alternative to the Courts. Inclusionary zoning is the primary mechanism available to municipalities to address the obligation, although a variety of other mechanisms are also available.

COMMENT: COAH should reconsider allowing RCAs to be used by municipalities to meet a portion of their affordable housing obligation which historically benefited the sending and receiving municipalities.

RESPONSE: The comment is beyond the scope of this proposal in that the elimination of RCAs was accomplished through the signing of Bill A500, now known as P.L. 2008, c. 46.

COMMENT: Has an economic analysis been done to determine the financial impact on middle income individuals and families that do not qualify for affordable housing under COAH's rules but may now be forced out of the regional housing market due to the additional cost placed on each new market rate unit to cover the subsidy required payment which will be passed on from developers to consumers in inclusionary zone sites? If so, what is that impact? What is the impact in dollar terms to an individual and average family?

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: COAH's proposed limited compliance techniques, further limited by the Legislatures elimination of RCAs, forces the borough to construct 100 percent municipally sponsored affordable housing to address the retroactive growth share obligation assigned to the borough under proposed N.J.A.C. 5:97-2.5. Coupled with the fact that there is not State funding sufficient to provide towns with resources needed to construct 100 percent municipally sponsored affordable housing projects, the municipality is forced to provide funding, which violates the terms of N.J.S.A. 52:27D-311d, as stated below:

"d. Nothing in P.L. 1985, c. 222 shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing."

In order to comply with the compliance documentation requirements for 100 percent municipally sponsored affordable housing, as well as other compliance techniques, the proposed rule requirements will necessitate the borough to expend municipal funds in order to demonstrate site control and build the project. In fact, each of COAH's compliance techniques that do not involve zoning requires a municipal 'intent to bond for shortfall' resolution from the governing body (and there are no more sizeable land opportunities in the borough to zone). This is contrary to the Fair Housing Act provision stated above, which has been often quoted by DCA staff in representations made to municipal officials and affordable housing professionals in the proposed rule hearings, and informational and training sessions. The limited range of compliance techniques and documentation required to demonstrate feasibility of each, will result in the Borough having to raise and expend municipal revenues, contrary to the provisions of the Fair Housing Act.

RESPONSE: The COAH process is voluntary as provided in the Fair Housing Act. While the total list of implementation mechanisms offers many choices for the delivery of affordable housing, municipalities are encouraged to plan for and present other "innovative approaches." The commenter is correct in noting that inclusionary development is a mechanism that does not require the expenditure of municipal funds. One-hundred percent affordable development most certainly is a mechanism that reduces the amount of land needed and reduces the overall impact of additional units and population, but by necessity in order to avoid "losing" the site to another party, it must be "controlled" by either the municipality or the partnering developer/sponsor. There are many funding sources other than the competitive nine percent tax credit program and the four percent tax credit program, that are projected to provide billions of dollars that can be sought by the municipalities or for-profit and not-for-profit developers working with the

towns. In the near future, COAH will be providing guidance on the availability of the many sources of funds for affordable housing programs. A resolution of intent to bond in case of shortfall is required in order to ensure that a proposed [page=5970] mechanism presents a realistic opportunity for the construction of affordable housing and is not intended to be a primary source of funding. Bonding would be necessary only if a source of funding identified in a municipal spending plan were no longer available.

COMMENT: The commenter appreciates COAH's response to comments of the New Jersey Department of Health and Senior Services regarding the inclusion of certain health care facilities to project non-residential component of the growth share calculation. Since that time, recent legislative changes have exempted residential construction resulting from a relocation of or an on-site improvement to a non-profit hospital or a nursing home facility from the imposition of a non-residential development fee. (P.L. 2008, c. 46.)

RESPONSE: The Council appreciates the commenter's support.

COMMENT: COAH needs to create some reasonable safe haven into its regulatory structure to protect fundamentally inclusionary municipalities from being improperly branded "exclusionary." Middletown is a fundamentally inclusionary community. To the extent that the regulations could be used to support a finding by COAH that a fundamentally inclusionary municipality is "exclusionary," the regulations demonstrate a deficiency in the "yardstick" that COAH has created; but not necessarily the zoning policies of the municipalities. This safe haven would prevent inclusionary towns from being stripped of their zoning powers by developers who, if awarded the remedy they seek, would provide a lower percentage of affordable units than the percentage of affordable households already existing in the community. Simply stated, COAH's regulations should not operate to impose tremendous Mount Laurel burdens on fundamentally inclusionary municipalities. Such an inclusionary municipality should be rewarded for its exemplary zoning practices. However, the proposed regulations, absent appropriate modification, will still affect Middletown in a profoundly unfair fashion. These regulations impose a colossal fair share burden on this fundamentally inclusionary community. Rather than recasting the whole regulatory structure, however, COAH can cure this serious problem by building a safeguard into the regulatory structure. More specifically, the regulations can, and should, contain a provision that recognizes that where a municipality can demonstrate, as a matter of fact, that it has not used its zoning powers to exclude the poor, it cannot be deemed as a matter of law that it is "exclusionary," and it should not therefore risk being stripped of its zoning powers on that premise by developers who seek to make more money than the present zoning already allows. A failure to build such a safeguard into the system results in the placing of the burden squarely on the shoulders of the very class the Supreme Court sought to protect by the doctrine.

RESPONSE: The Fair Housing Act (FHA) at N.J.S.A. 52:27D-317 provides protection for municipalities with substantive certification of Housing Elements and Fair Share Plans from COAH. The certified Plan is presumed valid unless an objector can prove that a realistic opportunity for affordable housing has not been created. Unless proven otherwise, a "certified" municipality is considered "inclusionary." If the commenter is asking for an inclusionary determination of a municipality which does not participate in the COAH process, then it is not possible because the FHA does not give COAH that authority.

COMMENT: The proposed regulations radically and unrealistically increase the cost of compliance techniques, including the following:

- 1. An increase in almost 100 percent or more in the costs of RCAs from \$ 35,000 per unit to \$ 67,000 to \$ 80,000 per unit;
 - 2. A 100 percent increase in the ratio of affordable to market units, from eight to four units;
- 3. An increase by almost 60 percent in the ratio of affordable units for new jobs, from one affordable unit for every 25 jobs to every 16 jobs;
 - 4. An increase in the ratio of affordable units to office space by almost 50 percent from one unit for every 8,333

square feet to 5,714 square feet;

- 5. An increase in the ratio of affordable units to retail by almost 170 percent from one unit for every 25,000 feet to 9,412 square feet;
- 6. An increase in the ratio of affordable units to restaurants by almost 70 percent from one units for every 8,333 square feet to 5,000 square feet;
- 7. An increase by over 230 percent in the ratio of affordable units to hotel space from one unit for every 31,250 square feet to 9,412 square feet;
- 8. An increase in the ratio of affordable units to warehouse space by almost 1,170 percent from one unit for every 125,000 square feet to one unit for every 10,667 square feet.

RESPONSE: The comment is outside the scope of this rule proposal. The changes referred to were proposed and adopted as part of the rules which went into effect on June 2, 2008.

COMMENT: Many commenters noted that the fiscal impact of these proposed regulations will be significant and the proposed regulations do not adequately address the increased costs brought about by preparing and implementing housing plans. It should be underscored that all of these new and expanded requirements would be effective retroactively to January 1, 2004, thereby adding burdens and costs to the municipalities and also penalizing any that relied on the Third Round rules when negotiating and executing Redevelopment Agreements and Plans. COAH's proposed regulations, in combination with other factors, forces municipalities to expend their own money to comply in direct contravention of the FHA, which prohibits COAH from requiring municipalities to expend their own money to comply: "Nothing [herein] shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing." N.J.S.A. 52:27D-311.d. The rules strain the municipal budget, lead to higher property taxes and require developer fee contributions to the point that they may be forced to stall, and even abandon, their development plans in communities across our State. The regulations must not impose unfunded mandates on municipalities. COAH must remove any ambiguity whether the regulations impose unfunded mandates on municipalities. Furthermore, the elimination of regional contribution agreements (RCAs) by Assembly Bill A-500 as a compliance technique has placed a further burden on municipalities.

RESPONSE: The Council does not mandate the expenditure of municipal revenues to provide low and moderate income housing. Under the Council's proposed rules, a municipality can choose from a variety of mechanisms in addressing its affordable housing obligation, some of which require little or no municipal subsidy. Inclusionary zoning, for example, would require the developer to provide the affordable housing on-site, or as a possible alternative, to provide a payment in lieu of construction. Neither scenario would require a municipal subsidy. Other mechanisms, such as an accessory apartment program and a market to affordable program require minimum subsidies of \$ 20,000 and \$ 25,000, respectively, which are significantly less than the payment-in-lieu amounts cited under N.J.A.C. 5:97-6.4(c). Although the cost of some compliance techniques has increased, the increase in the allowable percentages for residential development fees and the increase in non-residential development fees created by P.L. 2008, c. 46 (A500) will assist municipalities in generating additional funding for affordable housing activities and for the infrastructure capacity necessary to support them. Development fees, unlike a payment-in-lieu, are not intended to represent the cost of constructing an affordable housing unit. They merely recognize the linkage between residential and non-residential development to the need for affordable housing. Municipalities are also encouraged to take advantage of existing State and Federal funding sources such as the Balanced Housing Program, Low Income Housing Tax Credits, HOME, UHORP and MONI programs and to use affordable housing trust funds to leverage these public subsidies and/or funds from private lending institutions. There are many funding sources other than the competitive nine percent tax credit program, that are projected to provide billions of dollars that can be sought by the municipalities or for-profit and not-for-profit developers working with the towns. In the near future, COAH will be providing guidance on the availability of the many sources of funds for affordable housing programs. The proposed compliance bonus, found at

N.J.A.C. 5:97-3.17 and the redevelopment bonus, found at N.J.A.C. 5:97-3.19, provide municipalities that implemented the December 20, 2004 rules with additional credits for affordable units in accordance with the standards provided. This applies to preliminary and final approvals and redevelopment agreements.

COMMENT: The implementation of the proposed regulations will clash with different policy and data sets of other State agencies, including the Department of Environmental Protection, and will undercut both smart growth initiatives and economic development.

[page=5971] RESPONSE: The Council and staff will be working with the Department of Environmental Protection, the Office of Smart Growth and all other applicable agencies to set the framework for resolving any policy differences. Memoranda of understanding will be prepared to establish the guidelines for resolving any potentially conflicting interagency rules/policies. The Council believes that economic development will continue most effectively if it is preceded by local planning and that housing for the "workforce," both market and affordable, is an essential aspect of sustainable economic development.

COMMENT: The COAH regions as defined do not appear to make sense as a basis for analysis. The regions are analyzed to find "averages" of various sorts, and then comparisons are made between regions, for example the fixed cost of land, as in Appendix F, Part 5, Compensatory Benefits to Developers for Provision of Affordable Housing. Some of the regions include widely disparate counties, for example, Region 1 includes both Hudson and Passaic counties. It would be hard to find two counties that differ more from each other, in terms of the degree of urbanization, density of population, and presumably, land costs as well. Trying to make an "average" using these as two of four counties does not appear to make any sense, whereas combining for example, Sussex and Warren would be a logical package for comparison purposes. Using some of these regions, as currently constituted, for analytical purposes would appear to undercut the soundness and real-world usability of the analysis, and relegate it to the level of merely an academic exercise.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: The rules should have a section addressing and requiring conservation and long-term sustainability of water supply, energy efficiency and at least partial on-site electric generation, minimization of carbon footprint, and LEEDS certification or its equivalent for both construction and site location.

RESPONSE: While this comment is outside the scope of this rule proposal, the Council thanks the commenter for her recommendations.

COMMENT: Has a financial analysis been done to determine the actual cost incurred by a market rate unit owner over their lifetime of home ownership including the financial burden incurred from the increased market rate housing price, accrued mortgage interest payments, and additional tax burden in order to subsidize a COAH affordable housing unit? Assuming that the market rate unit is in an inclusionary zone with no other COAH mechanisms being used to offset the subsidy, what is that cost over a lifetime to a market rate homeowner?

RESPONSE: The Council's rule amendments at N.J.A.C. 5:97-6.4 provide for a compensatory benefit to the developer of an inclusionary development. Therefore, there is no additional financial burden to the market-rate homeowner. Further, the commenter should note that the Uniform Housing Affordability Controls (UHAC) provide that affordable unit owners pay the same association fees as market-rate owners.

COMMENT: Summary of Rules. At 40 N.J.R. 3379, the Smart Growth Impact Statement is inaccurate. COAH asserts the proposed regulations are consistent with the New Jersey State Development and Redevelopment Plan. The regulations are not consistent with the State Plan. Vast areas of the State without sewer, water, or other infrastructure are projected to have large amounts of growth, while areas that are undergoing major redevelopment of former industrial areas where there is adequate sewer, water and infrastructure to support development, are undergoing changes consistent with the State Plan which are largely ignored in the allocation of growth.

RESPONSE: The Council believes its Smart Growth Impact statement is accurate. COAH's charge is to develop a methodology to assign the regional fair share of affordable housing to all New Jersey municipalities. All applicable laws and regulations, including the latest DEP regulations which limit growth in areas without infrastructure, have been followed in developing fair share obligations for municipalities. Growth rates and projected growth rates were analyzed and adjusted for each town. This model took into consideration the Pinelands Management Plan, information provided by the Highlands Council and data from the Meadowlands Commission. In conjunction with the methodology, COAH's rules assign higher densities for inclusionary development in Planning Areas 1 and 2, centers and sewer service areas. For areas beyond these, and typically found without sewer facilities, no presumptive densities are suggested. COAH encourages center-based development, requiring water and sewer infrastructure or the prospect of it for inclusionary development, and there is an adjustment process if projections cannot be met. The rules recognize the benefits of redevelopment which is encouraged as a mechanism for providing housing.

COMMENT: The Township of West Orange wishes to express its strong concern that COAH's proposed regulations will not achieve these policy objectives and further express the Township's desire that COAH establish sensible State polices on affordable housing that rationally facilitate the production of affordable housing. We urge COAH to craft workable and sensible regulations that establish reasonable fair share goals and develop regulations that facility the ability of municipalities to meet reasonable fair share goals in accordance with the principles of sound planning and fiscal responsibility, which are integral components of the Fair Housing Act. The proposed rules frustrate the *Mount Laurel* goals.

RESPONSE: The Council thanks the Township for submitting these comments. Every effort has been made to meet the requirements of the Fair Housing Act and the directives of the Appellate Division decision in the development of the Council's rules in an equitable manner across the State. The rules offer many mechanisms for local consideration as towns proceed with their planning. The COAH staff is ready to assist all municipalities as they work on their latest submissions to meet New Jersey's goals for affordable housing.

COMMENT: By creating a regulatory scheme that forces municipalities, as a practical matter, to rely heavily on 100 percent affordable projects, COAH's revised Third Round Rules negatively affect the interests of low and moderate households. Since experience has demonstrated (a) that the vast majority of these projects rely upon nine percent tax credits and (b) that the HMFA will have to deny the vast majority of applications for these tax credits, the result is predictable: municipalities will have to expend their own money to comply. The gap in financing for 100 percent set-aside projects is enormous and thus a crushing burden will be placed on the taxpayers in contravention of the FHA prohibition that municipalities cannot be compelled to expend their own money to comply. N.J.S.A. 52:27D-311d. As taxes rise to cover the gap in financing, low and moderate income households are least able to bear those burdens. Thus, the predictable effect of COAH's proposed regulations is to increase the pressures on low and moderate income families to move out as their taxes rise. Low- and moderate-income households that do not live in deed-restricted homes and middle-income households, simply cannot bear the burden of a substantial increase in property taxes. In addition to the above, it is particularly unfair that COAH's regulations impose fiscal burdens on municipalities such as Freehold Township that have secured certification of their affordable housing plans in the first and second housing cycles.

RESPONSE: The COAH process is voluntary as provided in the Fair Housing Act. The total list of proposed mechanisms offers many choices for the delivery of affordable housing, including inclusionary development, which remains a viable mechanism to address affordable housing needs without the use of public subsidies. One-hundred percent affordable development most certainly is a mechanism that reduces the amount of land needed and reduces the overall impact of additional units and population. There are many funding sources other than the very competitive nine percent tax credit program that are projected to provide billions of dollars that can be sought by the municipalities or for-profit and not-for-profit developers working with the towns. In the near future, COAH will be providing guidance on the availability of the many sources of funds for affordable housing.

COMMENT: Each regional planning agency must provide sufficient areas to accommodate the low and moderate income housing obligations that COAH has assigned to the municipalities within their respective jurisdictions. Each

regional planning agency must provide for sufficient densities to address their housing obligations within the areas designated to accommodate growth. With the exception of a municipality in which land is not regulated by the regional agency (for example, a municipality in the Highlands Planning Area that does not opt in to the Highlands Master Plan), COAH should not accept a municipal filing of a housing element or a petition for substantive certification, until the regional planning agencies have created a realistic opportunity for their aggregate [page=5972] regional housing obligations in response to their constitutional and statutory responsibilities. If COAH chooses to accept filed housing elements and petitions for substantive certification from municipalities within lands regulated by the regional planning agencies listed in P.L. 2008, c. 46, the municipality must work with the applicable regional entity to maximize affordable housing opportunities prior to any substantive certification action. Any substantive certification that COAH grants must require a repetition and an opportunity to object once the applicable regional agency adopts its statutorily required housing plan.

RESPONSE: The comments presented are based on the passage and signing of Bill A500, now known as P.L. 2008, c. 46 and not the rule amendments at hand; therefore, they are outside the scope of this rule proposal. P.L. 2008, c. 46 will be considered as part of a future rule amendment.

COMMENT: The additional fees and in-lieu costs associated with the development of housing will be difficult to absorb and impossible to pass on to our buyers. The home building industry is at its worst since the Great Depression. Unless there is some prospect of profitability, builders like me just cannot take the risk building. COAH should incorporate more carrots and less stick in your regulations.

RESPONSE: The Council appreciates the efforts made by the building industry to assist with the provision of affordable housing. The proposed rules present densities for local planning consideration that are expected to provide "compensatory benefit" or sufficient economic incentive for builders to include affordable housing in their developments. The communities have also been encouraged to reduce costs and to provide more flexible development standards. Builders/developers are encouraged to work with communities to provide market and affordable housing that meets the needs of the public and private entities.

COMMENT: The increase in the inclusionary set-aside in Planning Area 1 to 25 percent seriously hurts the prospect of profitability in multi-family developments. If you want developers to build this type of project, you should be permitting more units per acre and less of a set-aside percentage.

RESPONSE: The proposed rule incorporates both an increased maximum set-aside and a presumptive minimum density standard. Where presumptive minimum densities do not reflect a density increase sufficient to provide a realistic opportunity for the units to be constructed, developers and/or owners of inclusionary sites may submit financial details to the Council demonstrating that a lower set-aside is needed for financial feasibility. The Council will only issue substantive certification to municipalities wherein proposed inclusionary zoning reflects a realistic opportunity for the construction of affordable housing.

COMMENT: If the need is for 115,000 new affordable units, how does COAH expect that number to be realized when there were only 35,000 new affordable units as a result of the COAH process from 1987 to the present? In addition, the economy is near recession-mode; banks are cautious with mortgage loans because of the sub-prime disaster and the rental units are taking much longer to lease because of poor credit and too much debt for prospective renters. The Appellate Division told COAH to determine need and acknowledge what can actually be built from 2004 through 2018. COAH is being unrealistic to expect 115,000 new affordable housing units in this economy and with State funds dwindling. COAH should revise the need projection to a realistic number.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: As was the case with the previously proposed (now adopted) third round rules, the commenter is concerned that the currently proposed rules do not clarify how Pinelands municipalities should calculate and meet their

affordable housing obligations in the Pinelands Area. COAH previously indicated the commenter's concerns would be addressed in a future memorandum of agreement (MOA) between COAH and the Pinelands Commission. The commenter agrees that a new MOA between the agencies is advisable and necessary. However, given that such an MOA may not be drafted and signed for many months, the commenter remains concerned that in the interim, neither Pinelands municipalities nor the Commission will be able to answer questions as to the applicability of the proposed rules to lands in the Pinelands Area. This puts Pinelands municipalities at a significant disadvantage when attempting to meet the December 31, 2008 deadline for submission of new third round fair share housing plans. Consequently, the commenter suggests that COAH consider extending the submission deadline for Pinelands municipalities until an MOA can be developed and these questions can be resolved. In addition, the commenter believes that some of its concerns with the proposed rules are substantive and, as such, might best be addressed through regulation rather than a MOA. Please note that while the commenter has limited its specific comments to the rules now being proposed, they believe it remains critical for COAH to address the very basic issues they raised in their March 24, 2008 letter on the proposed rules published in the January 22, 2008 New Jersey Register. In particular, vacant lands in the environmentally sensitive portions of the Pinelands Area (Preservation Area District, Special Agricultural Production Area, Forest Area and Agricultural Production Area) should be expressly excluded from the vacant land inventory compiled pursuant to N.J.A.C. 5:97-5.2(d)4i.

RESPONSE: The Council is aware of the outstanding issues pending with regional planning entities, including the Pinelands Commission, and the communities under their jurisdiction. Also, the signing of P.L. 2008, c. 46 created additional requirements for regional entities, including the requirement for a 20 percent affordable housing setaside in all residential developments. The Council, however, has determined that in keeping with the Appellate Division's requirements for timeliness, all parties must work to meet the established deadlines. The Council intends to work expeditiously with the Pinelands Commission to enter into a Memorandum of Agreement. For the purpose of establishing presumptive minimum densities associated with the Council's zoning requirements, compatibility with the regulations of the Pinelands Commission is and previously has been referenced within the rule. The Council will seek recommendations from the Pinelands Commission if a municipality seeks alternative densities based upon its jurisdiction under the Pinelands Commission. Municipalities may assist the Council by including such a recommendation from the Pinelands Commission with the municipal petition for substantive certification. The Council and staff are well aware of the commenter's concerns regarding the accounting for vacant land in environmentally sensitive areas. A key aspect of the upcoming MOA will address how COAH, the Pinelands municipalities and the Pinelands Commission will handle environmentally sensitive vacant land. COAH's regulations currently indicate that COAH will defer to the plans and regulations of regional planning entities.

COMMENT: COAH has not provided all the facts municipalities need to replicate the means by which COAH extrapolated their fair share responsibilities. When COAH first proposed the growth share approach in 2003 and 2004, it acknowledged that its fair share regulations in the first and second housing cycles were unintelligible to the public generally and that it needed to provide a readily understandable way for municipalities to ascertain their fair share responsibilities. Yet, when COAH proposed new regulations, it failed to provide the facts municipalities needed to determine their fair share obligations. COAH has now posted on its web site information it used to determine municipal fair shares. However, even after this posting, planners are reporting to us that they still cannot replicate how COAH determined the fair share of municipalities. It is unreasonable for the agency to adopt a regulatory scheme that cannot be re-created or explained by other experts in the field. It is incumbent for the agency to provide to local governments a clear explanation as to how this methodology was developed and utilized.

RESPONSE: As indicated in the Appendix F report, "Allocating Growth to Municipalities," the forecast model allocates county-wide projected growth among all the municipalities in a county. COAH projects growth for each municipality based on historic growth rates, including consideration of how close to build-out the municipality is, subject to the constraint that growth in all the municipalities in a county must sum to the projected county control total. The municipal level projections sum to the county totals because the county totals are the best available long term employment and housing projections available for the whole State. However, these projections are only available at the

county level, and not the municipal level. There are instances in which there is insufficient land in the municipality to accommodate all the projected growth. In these instances, the growth beyond what the municipality can accommodate spills over into neighboring municipalities. In addition, the Task 1 report identifies the method used to prepare the allocations. This process is described in greater detail below.

[page=5973] The employment model and the housing model are similar in structure to each other. The employment model, and the housing model work the same way, except for the use of the ratio of population to housing units, for which an example is shown.

Data

The majority of the input data for this model are employment data. These include the 1993, 2002, and 2006 municipal employment levels and the NJLWD 2018 projected county employment levels. As indicated in Section 3 of the Appendix F, Task 1 report, the State government sector is not reported anywhere at the municipal level, so this employment allocation model only covered three sectors: private employment, Federal government, and local government. State government employment will be discussed separately. The other input data is non-residential build-out constraints.

Converting Floor Space to Employment

The physical growth capacity in this model is based on the data generated by the National Center for Neighborhood and Brownfields Redevelopment (NCNBR) vacant land study. The data are expressed in terms of gross floor area and are broken down into office, retail, warehouse/industrial, and others/blended for almost all municipalities.

When testing whether the future growth limit is reached with the projected employment level, it is important to translate the gross floor space into employment. Appendix F, Task 4 includes a literature review and a sample survey for New Jersey on employee/floor space ratios by type of uses. Here are the ratios (in terms of number of employees per 1,000 square feet of gross floor space) COAH's consultants initially recommended in Task 4:

- -- Office 3.32
- -- Retail 2.00
- -- Warehouse 1.72
- -- Manufacturing and Industry 1.43

These ratios could be sensitive to the estimated amount of employment based on the potential nonresidential development, so all chosen ratios in the employment allocation model were within the upper and lower bound of those recommended by Task 4. Using an adjustment of eight percent for vacancies and 15 percent for common areas, this translates to 2.25 employees per 1,000 square feet. This ratio was not identical for all municipalities because their current mix of commercial space varies by municipality.

Growth Rates

Historic growth rate

The historical growth rate is calculated using the 1993 to 2006 employment numbers. Statewide, the historical employment growth rate (excluding the State government sector) is approximately 1.3 percent between 1993 and 2002, but some municipalities experienced annual rates over 15 percent in this period. While the majority of such municipalities had a very small employment base in 1993, some mid-size municipalities (with 1993 employment around 2,000 jobs) like Allendale Borough in Bergen County, Swedesboro Borough in Gloucester County, and Monroe

Township in Middlesex County, had annual rates exceeding 15 percent. In other words, these municipalities more than doubled their employment primarily due to new development. Such fast employment growth rates are unlikely to sustain, especially when their growth capacity is being used up. Because of this possibility, COAH's methodology uses a combination of the historical growth rate and the "S-curve" growth rate, which is discussed below.

S-curve, or build-out, growth rate

The "build-out growth rate," also called the "S-curve growth rate," is econometrically estimated by a cross-sectional regression of 1993 to 2006 municipal employment growth as a function of the percentage of the total possible build-out that had already occurred in 1993. As expected, this estimation--discussed in greater detail in Appendix 1 of the chapter Appendix F report, "Allocating Growth in Municipalities"--reveals that growth slows as municipalities approach their build-out capacity.

Procedure

This is an iterative model with a starting point based on historic growth rates, a sequence of intermediate calculations, and a final result. The intermediate steps account for the county control total, the maximum municipal level growth rate, and the capacity of a municipality to accept growth.

In the first step, the initial municipal employment by 2018 was projected based on the average of the historical growth rate and the S-curve growth rate. This average is called the "Mean Growth Rate." These rates are indicated in columns [3] through [5] in Table 1 below, and the initial projections are shown in column [7].

Note that in the example, the historical growth rate is negative for seven municipalities in Salem County. However, the build-out growth rate (the "S-curve growth rate") is positive for all municipalities so that the mean growth rate is positive for all but two municipalities.

These initial projections were summed at the county level and compared to county control totals. If the sum of the initial projections for a county exceeds the county control total for the county, the employment of each municipality is scaled down. In the example shown in Table 1, the Initial 2018 Employment Projection is 33,198 jobs, and the county control total is 25,918. This indicates that the initial projections, based on municipal growth information, are too great, and that they need to be scaled back.

The growth of each municipality is also measured against its physical growth capacity (shown in column [10]) to ensure that the build-out level did not exceed 100 percent of its physical development capacity. Each municipality's implied growth rate, was also compared to its maximum growth rate, which is either the historical rate or the S-curve growth rate. In the example, three communities, Elmer Borough, Pilesgrove Township and Pittsgrove Township, have initial projected growth that exceeds the capacity of the municipality. These townships have negative numbers in column [11], which indicates that there is less capacity than there is projected growth. These municipalities are candidates for generating spillover.

The spillover was then estimated and sent to those adjacent municipalities that had the capacity to receive the spillover, either in the same county or out of county. This movement of jobs creates a new estimate of growth for each municipality, and any of the three constraints (county control total, municipal level capacity, and municipal level maximum growth rates) could be violated. The model needs to check the constraints again for each municipality, and make adjustments, and then check again, and make more adjustments. This is the iterative part of the algorithm.

In each round of the allocation of the spillover, each receiving municipality was checked to ensure that the growth increment did not violate the two growth constraints of the model (growth capacity and maximum growth rate).

For counties that had a sum of initial projected employment less than the county control totals, their municipalities would receive cross-county spillover under the same set of constraints. The county total was then compared to the

control total. If the county total was still below the control total, the municipality employment was scaled upward and the spillover allocation procedures followed.

This iterative process resulted in a municipal allocation that summed to within 0.4 percent of the total Statewide employment. Each county was close to its control total as well. The remaining 0.4 percent of employment was allocated by proportionately scaling up or down municipalities in each county such that the projections summed to the county control totals exactly and neither the growth rate nor build-out constraints were violated.

For example, in Salem County, the initial 2018 employment projection was greater than the 2018 county control total employment projection. Additionally, the initial employment projection exceeded the total physical growth capacity in 2018 in three municipalities. After scaling to the county controls, allocating the resulting spillover from Salem County and other counties, and numerous iterations, the final allocation met the county control total and was below the total physical growth capacity. The final allocation is indicated in column [12] of the example, the capacity is in column [13], and the amount of capacity remaining in 2018 is shown in column [14].

[page=5974] Housing Model

As mentioned previously, the housing model follows the same algorithm as the employment model. However, since the New Jersey Department of Labor and Workforce Development (NJLWD) provides only the population projections, and not housing unit projections, the starting point (1993 housing units) must first be calculated using population to unit ratios from the 1990 and 2000 census and the 1993 population projection from the NJLWD. Table 2 shows an example from Pittsgrove Township in Salem County. The 1990 and 2000 population to unit ratios are shown in rows [1] and [2] of Table 2. These ratios are interpolated to determine the 1993 population/unit ratio, which is shown in rows [3] through [5]. The 1993 population forecast is divided by this ratio to arrive at the 1993 units. This is the starting point for the calculation of the growth rates. As discussed in the Task 1 report, the ending point is 2006 housing unit information, which was determined using 2000 census information on units, adding in new units as determined by certificates of occupancy, and removing demolished units as determined by demolition certificates. Additionally, the 2000 population to units ratio was set as a constant to determine population projections in the housing model.

Thereafter, the historic, S-curve, and mean growth rates were calculated in the same fashion as the employment model. These rates are shown in rows [11] through [13].

| Table 1: Salem County Employment - Growth Rates, Initial Projections and Final Allocation | | | | | | | | | | | | | |
|---|------------|------------|-------------|-------------|------------|------------|--------------|-----------------|-----------------|----------------|-------------|---------------|---------------|
| | | | | Annual Gr | owth Rates | | | | | | Available | Final | |
| | | | | | | | | | | Total Physical | Capacity in | allocation in | |
| | | | | | | | Initial 2018 | County Control | Post-2002 | Growth | | 2018 after | Total Physics |
| | | | | | | 2444 | | | Physical Growth | Capacity in | | multiple | Growth |
| | 1993 | 2002 | Historical | S-curve | | 2006 | | Total Empoyment | | | Projection | iterations | Capacit |
| Municipality | Employment | Employment | Growth Rate | Growth Rate | Rate | Employment | Projection | 2016 Projection | Capacity | | | 101111111 | |
| | (1) | 21 | [3] | [4] | | [6] | | [8] | | [10] | [11] | [12] | 2.391 |
| Alloway Township | 352 | 610 | 7.9% | 3.1% | | 713 | 1,185 | | 1,761 | 2,391 | 1,206 | 907 | 16,710 |
| Carneys Point Township | 1,508 | 2,065 | 7.6% | 3.7% | 5.8% | 2,992 | 5,011 | | 14,655 | 16,710 | 11,899 | 4,048 | |
| Elmer Borough | 1,415 | 1,573 | 1.5% | 0.2% | 0.8% | 1,697 | 1,869 | | 185 | 1,758 | (111) | 1,697 | 1,758 |
| Elsinboro Township | 513 | 137 | 6.8% | 3.6% | -1.4% | 76 | 64 | | 12 | 149 | 85 | 76 | 149 |
| Lower Alloways Creek Township | 1,959 | 992 | -5.8% | 3.9% | -0.9% | 470 | 416 | | 2,013 | 3,006 | 2,589 | 470 | 3,006 |
| Mannington Township | 1,234 | 971 | -2.3% | 3.5% | 0.6% | 872 | 938 | ~ | 2,806 | 3,777 | 2,639 | 872 | 3,777 |
| Oldmans Township | 626 | 693 | -2.3% | 3.7% | 0.7% | 582 | 631 | | 2,399 | 3,092 | 2,461 | 582 | 3,082 |
| Penns Grove Borough | 1.227 | 1,141 | -0.6% | 1.4% | 0.4% | 1,133 | 1,191 | | 447 | 1,588 | 397 | 1,133 | 1,588 |
| Pennsylle Township | 5,206 | 4,278 | -1.8% | 2.5% | 0.3% | 3,960 | 4,113 | | 3,710 | 7,988 | 3,875 | 3,960 | 7,968 |
| Pliesgrove Township | 273 | 1.007 | 24.1% | 1.6% | 12.8% | 1,129 | 2,668 | | 723 | 1,730 | (1,138) | 1,528 | 1,730 |
| Pittsgrove Township | 920 | 2.781 | 17.7% | 1.3% | | 3,042 | 6,523 | | 1,543 | 4,324 | (2,199) | 3,777 | 4,324 |
| Quinton Township | 175 | 148 | -0.5% | 4.2% | | 163 | 199 | | 2,626 | 2,774 | 2,575 | 178 | 2,774 |
| Salem City | 2,939 | 3,151 | 0.8% | 1.9% | | 3,262 | 3,798 | | 2,506 | 5,657 | 1,859 | 3,370 | 5,657 |
| Upper Pasgrove Township | 515 | 1.010 | 11.4% | | | 1,280 | 2,353 | | 1,952 | 2,962 | 609 | 1,516 | 2,962 |
| Woodstown Borough | 1,668 | 1,690 | 0.5% | 1.6% | | 1.787 | 2,039 | | 1,300 | 2,990 | 951 | 1,804 | 2,990 |
| Total | 20,732 | 22,237 | 0.5% | 1.04 | 1,2,3 | 23,158 | 33,196 | 25,918 | 38,658 | 60,896 | 27,697 | 25,916 | 60,895 |

Click here for image

[page=5976] **Table 2**

Calculation of Growth Rate for Pittsgrove Township

| | | Population | Units | Population/ Units |
|-----|---|------------|-------|----------------------|
| [1] | 1990 | 8,121 | 2,788 | 2.91 |
| [2] | 2000 | 8,893 | 3,155 | 2.82 |
| [3] | Difference between 1990 and 2000 pop. /unit ratio | | | -0.094 |
| [4] | Annual change in population /unit ratio | | | -0.032 |
| [5] | 1993 Population /unit ratio | | | 2.89 |
| [6] | 1993 Population | | | 8,417 |

| [7] | 1993 Units | 2,918 |
|------|------------------------------------|-------|
| [8] | 2006 Units | 3,469 |
| [9] | 2006 Units - 1993 Units | 551 |
| [10] | Percent Increase from 1993 to 2006 | 19% |
| [11] | Historical Growth Rate | 1.5% |
| [12] | S-curve Growth Rate | 0.5% |
| [13] | Mean Growth Rate | 1.0% |

COMMENT: NJ-NAIOP requests that COAH eliminate the non-residential component of the actual growth share obligation as set forth in N.J.A.C. 5:97- 2.2(e) and 2.5(b). NJ-NAIOP does not request that COAH eliminate the nonresidential component of the projected growth share obligation as set forth in N.J.A.C. 5:97-2.2(d) and 2.5(a). NJ-NAIOP requests that COAH eliminate the actual non-residential growth share for a variety of reasons with the detailed explanation for each set forth below:

- -- First, as municipalities seek to minimize their affordable housing obligations, the actual non-residential growth share obligation will create a disincentive for municipalities to zone for and approve substantial commercial developments and this disincentive will harm New Jersey's economy.
- -- Second, the actual non-residential growth share is not necessary for COAH to satisfy its mandate under the Fair Housing Act (FHA), N.J.S.A. 52:27D-301, et seq.
- -- Third, the adoption of the Statewide Non-residential Development Fee Act (Act), Sections 32-38 of P.L. 2008, c. 46, regulates the contribution to be provided by non-residential development, and COAH's growth share methodology should be consistent with the purposes of the Act.
- -- Fourth, there is no basis in the record to support COAH's determination that every 16 jobs generated by non-residential development create a need for one affordable housing unit within the municipality where the non-residential development is located.

In the alternative to incorporating these specific comments, COAH needs to revise its methodology to more accurately reflect the actual need for affordable housing generated by non-residential development. A more appropriate methodology would include studies prepared by labor/workforce economists, experienced in the characteristics of labor "sheds," job creation patterns and housing market adjacencies, to eliminate the concern that numbers and allocations appear to be "backed into" as opposed to being based on sound housing and economic data.

RESPONSE: The comment is outside the scope of this rule proposal. P.L. 2008, c. 46 will be the subject of a future rule amendment.

N.J.A.C. 5:97-1.4

COMMENT: COAH should add the following definitions:

"'Rehabilitation' means an undertaking, by means of extensive repair, reconstruction or renovation of existing structures, with or without the introduction of new construction or the enlargement of existing structures, in any area that has been determined to be in need of rehabilitation or redevelopment, to eliminate substandard structural or housing conditions and arrest the deterioration of that area.

'Rehabilitation area' or 'area in need of rehabilitation' means any area determined to be in need of rehabilitation pursuant to section 14 of P.L. 1992, c. 79 (C.40A:12A-14)."

RESPONSE: The comment is outside the scope of the rule proposal as adequate definitions for "rehabilitation" and "rehabilitation area" are already included in N.J.A.C. 5:97-1.4 and the amendments do not alter the meaning of the existing definitions.

COMMENT: Definition of "potential growth share opportunities." The definition should not be adopted. If there is to be an adjustment to the projections of growth pursuant to N.J.A.C. 5:97-5.6, the adjustment should simply be an adjustment without the Council attempting to intensify development patterns of a municipality, and thereby change its character. As presently structured, the regulations promote sprawl, and are inconsistent with the mission of the Council to provide affordable housing within the framework of sound, comprehensive planning

RESPONSE: The Council does not believe that it will be promoting sprawl by adopting the definition of potential growth share opportunities. Further, N.J.A.C. 5:97-5.6 sets forth that the Council shall consider the character of the area surrounding each site in establishing densities for sites in the inventory. The Council is confident that the process it has set forth will prevent bad planning and sprawl from occurring as a result of a projection adjustment.

COMMENT: The commenter requests that the special needs definition be expanded to match the definition of the Special Needs Trust Fund - physically, mentally and developmentally disabled, along with homeless, victims of domestic violence, aging out youth, etc.

RESPONSE: The comment is outside the scope of the rule proposal.

COMMENT: The definition of transit-oriented development is too broad. In many cases, the entire town is within one-half mile of a bus stop - though some bus routes may only run a few times a day. In other cases, a development may be within one-half mile drawing a straight line, but have no way to actually access transit. In effect, this simply slashes many towns' entire obligation by one-third, without providing any real smart growth benefit - instead simply diluting the constitutional obligation. COAH needs to define transit-oriented development much more narrowly, perhaps only as transit villages and urban transit hubs with a 20 percent set-aside as required by A500. We have attached as Exhibit A GIS data that we received from NJ Transit showing the massive area of the State that would be impacted by this definition if not narrowed.

RESPONSE: As evidenced by the portion of the definition describing a transit oriented development as a development within a "larger, pedestrian-friendly, transit-supportive neighborhood core/center," it was never the Council's intent to include every bus stop in the State. To clarify, the word "stop" will be replaced with the word "station." Further, the commenter should be aware that P.L. 2008, c. 46 will be the subject of a future rule amendment.

COMMENT: The definitions for permanent supportive housing and supportive housing must be clarified. The definitions conflict with the information contained in N.J.A.C. 5:97-6.10(a). Specifically, there is confusion between what constitutes supportive housing and what is considered "permanent" supportive housing. The explanation provided at COAH training seminars differs from the proposed rules. Specificity is necessary for Plan preparation.

RESPONSE: The Council believes that its definitions for permanent supportive housing and supportive shared living housing sufficiently make the distinction that permanent supportive housing is credited by the Council on a per

unit basis while supportive shared living housing is credited on a per bedroom basis.

[page=5977] COMMENT: Definition of "implementation schedule." The implementation schedule should not be a fixed timetable based upon dates, but rather a timetable based on sequential events, and the length of time it will take between events. To require fixed dates will result in none of the dates being met if any one of the fixed dates is missed. If the timetable were sequential, described by length of time from event to event, the failure to hit one mark would not automatically result in missing all marks.

RESPONSE: The Council believes that the requirement that a detailed timetable be included as part of the implementation schedule is necessary to determine whether the proposed mechanism is realistic and provides sufficient flexibility. If the municipality discovers that the initial time period included in its implementation schedule will not be met, it may amend the implementation schedule accordingly, in conformance with COAH's rules.

COMMENT: "Sewer capacity" is defined as the ability to treat and dispose of all sewage generated from a site, that are either consistent with the area-wide water quality management plan, or with an amendment to the area-wide water quality management plan. Sewer capacity either exists or does not. COAH's definition of sewer capacity includes both that which exists and that which may exist, which defeats the purpose of even defining the term at all.

RESPONSE: The Council believes that its definition of sewer capacity effectively sets forth the conditions under which a site may be presumed to have available the necessary capacity to treat and dispose of the sewage generated from the site. The commenter should be aware that COAH will be entering into memoranda of understanding with other agencies regarding issues that require review by both agencies, such as sewer capacity.

N.J.A.C. 5:97-2

COMMENT: Municipalities should have a mechanism for challenging projections of growth. Many municipalities are being assigned projections of growth in excess of actual anticipated growth. At the same time, those municipalities are required to use the projections as the minimum for submission of a plan of compliance. Once submitted, unless the regulations are changed, COAH will require municipalities to zone for that growth, or otherwise implement the plan. Such an approach will, in and of itself, compel growth contrary to the concept of growth share and the requirements of the *Mount Laurel* doctrine. COAH needs to establish a mechanism whereby the accuracy of growth projections can be challenged as part of or prior to submission of a plan of compliance.

RESPONSE: The commenter is referred to Subchapter 5, Adjustments, which provides specific criteria for municipalities to adjust their household and employment projections based on lack of vacant land. These procedures are similar to those established in the second round. With regard to the commenter's concern regarding reduction of the obligation based on slower growth, if the actual growth share obligation is less than the projected growth share obligation, the municipality must continue to provide a realistic opportunity for affordable housing to address the projected growth share through inclusionary zoning or any of the mechanisms permitted by N.J.A.C. 5:97-6. This means, for example, that the municipality must continue its inclusionary zoning, continue its market-to-affordable or its accessory apartment program, and continue to implement its implementation schedule.

COMMENT: The *Mount Laurel II* decision found that our cities were disproportionately burdened with more than their fair share of low income families, causing an unfair fiscal burden. The January 25, 2007 Appellate Division case concerning the COAH rules, *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95, supra*, at 21, confirms that the Fair Housing Act "created COAH to provide an administrative mechanism for implementing the Mount Laurel doctrine." COAH's first and second rules round recognized the fiscal plight of cities that was at the foundation of *Mount Laurel II* by excluding urban aid municipalities from the allocation of prospective need. However, the Growth Share formula does not reflect this, and, therefore, our fiscally burdened cities now have a growth share affordable housing obligation, in direct conflict with *Mount Laurel II*. In order to relieve the fiscal burden on cities as envisioned in *Mount Laurel II*, all municipalities that receive state aid under the Municipal Urban Aid Program, the Distressed Cities

Program, the "Special Municipal Aid Act" or the "State Aid to Densely Populated Municipalities Act" (that is, "State Aid Municipalities") should be exempt from growth share obligations.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: Because not all affordable housing units that are the result of being generated by employment growth will be able to be built in a mixed-use residential zone, how will these affordable housing units be dispersed on other sites that may have been set aside to fulfill another portion of a municipality's obligation, such as the location of market rate units as part of the one affordable unit included with four market rate units?

RESPONSE: The commenter should note that both residential and non-residential growth incur a municipal growth share obligation. The municipality is responsible for submitting a plan that meets its overall affordable housing obligation, as set forth in N.J.A.C. 5:97-3. Municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, market to affordable programs, reconstruction, and municipally sponsored programs.

COMMENT: The commenter appreciates the exemption granted by P.L. 2008, c. 46 for property used for educational purposes. This provides equality for the independent institutions that must have plans approved at the municipal level whereas the public institutions enjoy a form of sovereign immunity granted through case law dating back to the 1970's where Rutgers University challenged the Township of Piscataway. However, that exemption causes additional concerns because the proposed COAH regulations would cause an additional growth share obligation on the part of the municipality that becomes an unfunded mandate due to the exemption. The commenter recommends that there be a greater concurrence between P.L. 2008, c. 46 and the COAH regulations.

RESPONSE: P.L. 2008, c. 46 will be the subject of a future rule amendment.

COMMENT: Following the issuance of the proposed rules on June 16, 2008, the Legislature and the Governor enacted P.L. 2008, c. 46. This law offers new guidance regarding the treatment of non-residential development. In particular, the statute at section 38 provides that, except as expressly provided in P.L. 2008, c. 46, any provision of any ordinance that imposes a fee or an obligation for the development of affordable housing on a developer of non-residential property shall be void and of no effect. The statute instead imposes a fee of 2.5 percent on "all construction resulting in non-residential development." Certain uses (including, for example, house of worship, community centers, parking lots and "property used for educational purposes") are exempt from the non-residential development fee. COAH's proposed regulations, however, would result in the continuance of a growth share obligation for municipalities, even where the non-residential development is exempt from the payment of the 2.5 percent fee. This situation creates a hardship for municipalities. The commenter recommends that COAH postpone adopting the proposed regulations as they apply to uses exempted by P.L. 2008, c. 46 until such time as the regulations implementing P.L. 2008, c. 46, §35 are drafted and the different approaches of the new law and COAH's regulations can be resolved.

RESPONSE: P.L. 2008, c. 46 will be the subject of a future rule amendment.

COMMENT: Under the new regulations, COAH no longer provides a credit for residential demolitions, even when the demolition is related to a catastrophic event. This means the Borough of Franklin will incur an affordable housing obligation when the house destroyed by fire is replaced with a new residence on the same lot. While the Borough can appreciate COAH's explanation that demolitions have already been "factored in" growth share data, it remains grossly unfair to assess an affordable housing obligation for replacement housing that occurs as a result of fire, flood or other natural disaster. Furthermore, requiring the victims of such a disaster to pay a developer's fee is an unacceptable methodology for addressing this unfair affordable housing obligation. When there is no real growth there should be no affordable housing obligation.

[page=5978] RESPONSE: The comment is outside the scope of this rule proposal. However, the commenter should note that it is a violation of COAH regulations, effective June 2, 2008, for municipalities to impose an affordable

housing obligation or payment in lieu on an individual homeowner. The commenter should also note that a municipality is not required to impose a development fee on a homeowner whose property is demolished as a result of fire or any other natural disaster, and in fact, such an imposition is a decision made solely by the municipality. Further, the Council's rules, at N.J.A.C. 5:96-15.1, permit any interested party to submit a waiver request from any requirements of the Council's regulations. The Council is aware of the equity issues that arise as a result of this particular situation and assures the commenter that it will take action to address any inequity while at the same time upholding the methodology used in determining municipal affordable housing obligations.

N.J.A.C. 5:97-2.2

COMMENT: If COAH chooses to increase the municipal fair share based on actual growth, it is imperative that inclusionary developments addressing the 1999-2018 housing obligation not be included in the actual growth that is used to calculate the actual growth share.

RESPONSE: This comment is outside the scope of the rule proposal. The Council will consider the commenter's suggestion in the context of future rule amendments based on P.L. 2008, c. 46.

COMMENT: It is essential that COAH allocate housing need to each municipality so that each municipality and the general public understand the municipal fair share of the regional housing need. It is imperative that the fair share not be altered downward in any way.

RESPONSE: The growth share concept remains unchanged from the rules that became effective on June 2, 2008. This comment is therefore outside the scope of this proposal.

COMMENT: This rule indicates that a municipality's actual growth share calculation shall be based on permanent certificates of occupancy issued for market-rate and non-residential construction; N.J.A.C. 5:97-2.3(d)1i indicates that the housing element calculating actual growth share shall consider certificates of occupancy issued after January 1, 2004. The commenter notes that many projects are completed and occupied under the terms of temporary certificates of occupancy and in some cases the issuance of a permanent certificate of occupancy can follow up to a year after project completion and occupancy. Therefore, the commenter requests that projects that were completed and occupied before January 1, 2004, but received permanent certificates of occupancy after that date, be excluded from the third round actual growth share calculation.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: The appellate court was clear that COAH's housing allocations cannot be a function of a municipal decision not to grow. Yet, during the public hearings preceding COAH's June 2, 2008 rule adoption, COAH officials told municipal officials that they would not be responsible for the housing if they did not grow consistent with COAH's projections. Again, the projections are just a different means of allocating the State's housing need. If each municipal projection can be reduced because the municipal growth rate does not keep pace with COAH's projections, COAH is allowing municipal decisions not to grow to lower the municipal housing obligation. Despite numerous requests for COAH to clarify that slower growth will not result in smaller housing allocations, COAH has failed to provide the required assurances. Either COAH is allocating housing need or it is not. In order to comply with the appellate court's order, COAH must allocate the entire Statewide need and require each municipality to provide a realistic opportunity for an established housing allocation throughout the period of substantive certification.

RESPONSE: The commenter should note that in accordance with N.J.A.C. 5:97-2.2(e), municipalities must continue to provide a realistic opportunity for affordable housing to address the projected growth share through inclusionary zoning or any of the mechanisms permitted by N.J.A.C. 5:97-6.

COMMENT: On the issue of changing housing obligations, COAH has proposed amended projections two weeks after adopting projections in the June 2, 2008 New Jersey Register. At 40 N.J.R. 2763, COAH hints that it may amend

its projections again once the Highlands Regional Master Plan is adopted. The regulated public requires certainty as to the affordable housing obligation. Municipalities deserve some certainty in developing their plans and the private sector deserves some level of certainty before deciding whether to participate in COAH's process or enforce the constitutional obligation in court.

RESPONSE: The commenter should note that the ratios and the affordable housing need of 115,666 units remain unchanged from the rules that became effective on June 2, 2008. The Council believes that the growth share methodology gives municipalities predictability and certainty in meeting their affordable housing obligations.

COMMENT: The concept of actual growth share is counterproductive. Any regulatory scheme that does not allow municipal officials and the private sector to work together to address the affordable housing obligation is severely flawed. COAH should allocate the 115,666 housing units to New Jersey municipalities and allow them to address that obligation without the anxiety of trying to address a moving target.

RESPONSE: There is nothing in the Council's rules that prevent or discourage municipal officials from coordinating with the private sector to advance affordable housing programs. In addition, Council's rules provide flexibility in addressing the affordable housing obligation by providing an option for municipalities to phase certain components of its plan based on feasibility of the proposed mechanisms. The implementation schedule provided by N.J.A.C. 5:97-3.2(a)4 must include a detailed timetable for units to be provided within the period of certification and must demonstrate a realistic opportunity as defined under N.J.A.C. 5:97-1.4. In this case, a detailed implementation schedule is required, which includes deadlines for submission of documentation to the Council.

COMMENT: The calculation of growth share should mandate that where a municipality has projections that exceed COAH's projections, it should be required to use them. If the goal is to produce affordable housing, and all agree that there is a paucity in towns, in the regions, and in the State generally, then the highest projections should be required to be used.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: COAH's methodology does not comport with the court's direction to allocate all of the State's need to New Jersey's municipalities. Instead, the rule adoption, by COAH's own admission, initially allocates 103,908 low and moderate income units, 11,758 units short of COAH's calculation of the State's need for low and moderate income housing. The June 16, 2008 proposal amends the municipal residential and non-residential projections based on COAH's perception of the impact of DEP flood hazard and wastewater management rules. The revised projections redistribute the Statewide housing need, but still do not allocate COAH's calculation of the State need for low and moderate income housing. The revised projections result in the allocation of 103,294 of the 115,666 Statewide need for affordable housing. COAH's allocation methodology makes it improbable that many affordable housing units will be constructed. COAH has failed to allocate 12,372 units. It has allocated 24,363 low and moderate income units to New Jersey's distressed cities. COAH has allocated 6,590 low and moderate income units into municipalities in which there was insufficient land to address the 1987-1999 housing obligation. It has also allocated 12,549 units into the Highlands. Thus, of the 1999-2018 housing need of 115,666 low and moderate income units, 55,874 units are either: not allocated at all; allocated to places where the Legislature and DEP regulations severely limit development; allocated to places that have not been the focus of exclusionary zoning; or allocated to places in which COAH has determined that land is a scarce resource.

RESPONSE: N.J.A.C. 5:97 Appendix A, Growth Share Ratio Methodology, sets forth the methodology used to determine the growth share ratios and the regional affordable housing need for the period 1999 to 2018. The Council decided to adopt a uniform model that allocated housing need to all communities to ensure that every municipality would plan or zone to address their fair share of affordable housing. The housing ratio was determined by using approximately 60 percent of New Jersey's projected affordable housing need, adjusted by secondary sources, as the numerator which was divided by the projected housing unit growth for 2004 through 2018. The projected housing unit

growth includes the [page=5979] expected increase in units over the prescribed period of time. Units required to deliver prior round obligations are subtracted from the total projected housing growth. The Council believes that the growth share ratio for both housing and employment growth accurately and effectively address the need for affordable housing within the State for the period of time 1999 through 2018. The numerator in both of these ratios sums to New Jersey's projected affordable housing need. This total is calculated based on an estimate of future housing need as a percentage of future household growth, as was done in the previously adopted Third Round Substantive Rules. The Council's consultants used the most recent and best data available, and estimated that future need will grow as it has in the past. This assumes that in the period for which the Council is projecting need (between 1999 and 2018), low- and moderate-income households (those with incomes below 80 percent of their regional medians) represent the same percentage of all households as they do in 2000 (according to the 2000 U.S. Census 5-Percent Public Use Microdata Sample (PUMS)). Some of these households are accommodated by supply responses, which are expected to reduce New Jersey's projected affordable housing need by 15,631 units, or from 131,297 to 115,666. This numerator (115,666) is then divided by two denominators--projected housing unit growth from 2004 to 2018 and projected employment growth from 2004 to 2018--to create two Growth Share Ratios, one for housing and one for employment. Projected housing unit growth incorporates the expected increase in units over this time period as well as the predicted number of replacement units required. Also, units required to deliver prior round obligations are subtracted from this total, resulting in a statewide figure for housing unit growth of 314,069 units. Projected job growth is simply based on the difference between Econsult's estimates for 2004 and 2018 employment, or 790,465 units. Reaching roughly 112,218 affordable units reflects both a calculation error and a rounding error. First, for the Growth Share Ratio for housing, the Council uses total projected housing unit growth of 314,069 as the denominator. Second, the actual Growth Share Ratios calculated for housing units and for employment were both rounded to reach whole numbers. According to the consultants' analysis, the actual Growth Share Ratio for housing is 4.76 (rounded to 5) and for employment is 15.89 (rounded to 16). Applying the actual (non-rounded) ratios to projected housing unit and employment growth results in the development of 115,666 affordable housing units. Applying the rounded ratios to projected housing unit and employment growth results in the development of just 112,218 affordable housing units. The commenter should note that use of the new data results in a smaller rounding error than in the adopted regulations. Further, COAH's methodology does comply with the court's direction regarding the allocation of the State's affordable housing need. The court stated in its decision, "We have previously concluded that a growth share approach could be constitutional under existing Supreme Court precedent if: (1) COAH has accurate data that there is sufficient vacant developable land in growth areas to meet the identified housing need, and (2) municipalities with vacant developable land in growth areas cannot avoid their fair share obligation by deciding for themselves whether they will grow. Reallocating present need from inner cities to other municipalities is fundamentally inconsistent with a constitutional growth share methodology; it suggests that the excess need in inner cities must be specifically reassigned to other municipalities." The court went on to state, "We disagree with appellants that eliminating reallocated present need unfairly burdens inner cities. If most of the new jobs and new housing in the State do not occur in distressed inner cities, then affirmatively marketing the housing that does become available in suburban growth areas will not require cities to tax their limited sources by providing affordable housing. If, on the other hand, job growth and new housing development does take place in the inner cities, then those municipalities will have greater resources to meet the housing needs of the poor." In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1, 60 (2007). In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. This up-to-date data was used to allocate growth to municipalities in special resource areas, including the Highlands region. Further, Governor Corzine signed Executive Order No. 114 on September 5, 2008, under which COAH and the Highlands Council will execute a memorandum of understanding within 60 days. Lastly, the Council has added a redevelopment section to its rules, at N.J.A.C. 5:97-6.6. Redevelopment activity, including redevelopment activity in municipalities previously granted a vacant land adjustment, will incur a growth share obligation, which, when combined with the 20 percent set aside requirement in redevelopment areas that receive public subsidy in P.L. 2008, c. 46, is expected to capture affordable housing opportunities in areas that have previously received vacant land adjustments as well as other areas that are redeveloping.

N.J.A.C. 5:97-2.2(d)

COMMENT: This rule should be revised to change the retroactive aspect of the growth share that has actually occurred in a municipality so that a municipality shall not incur a growth share obligation at the new higher ratios for this time period. This should be changed particularly as it relates to approvals that were granted pursuant to adopted growth share ordinances if it is determined that these ordinances are invalid as they do not contain a compensating benefit.

RESPONSE: The Council has proposed a compliance bonus at N.J.A.C. 5:97-3.17 that addresses the commenter's concerns.

COMMENT: This rule specifies that a municipality may utilize its own growth projections to calculate the growth share pursuant to N.J.A.C. 5:97-2.3(d), provided the municipal projections exceed the 2018 projections in Appendix F, Part 2. Restricting the use of a municipality's own growth projections in this way is inherently unfair. Both the method used for allocating growth to municipalities as described in Appendix F, Part 2 and the May 2, 2008 revised Analysis of Vacant Land - Appendix F, Part 1, do not adequately address residential and non-residential redevelopment. Furthermore, the methods used in Appendix F, Part 1 and Appendix F, Part 2, and strategy described in this rule are based on the principle that it is in the best interest of the State for all municipalities to build-out to the limits of their physical growth capacity, wherein capacity is defined narrowly based on vacant land. This principle is fundamentally inconsistent with the State Development and Redevelopment Plan, the Highlands Regional Master Plan, Water Quality Management Planning and the principles of sustainability. Furthermore, by not adequately factoring in redevelopment or comprehensive system capacity, COAH's projections are inherently sprawl-inducing, resulting in the over-estimation of projected 2018 growth in municipalities with vacant land, and underestimation of growth in municipalities where redevelopment opportunities exist. It is strongly recommended that the use of municipal projections developed through the State Plan Cross Acceptance Process, Plan Endorsement Process and the Wastewater Management Planning Process be permitted, whether or not they exceed the projections in Appendix F, Part 2.

RESPONSE: The Appellate Division in its 2007 decision required COAH to demonstrate that there was sufficient vacant land to justify use of a growth share approach to establishing affordable housing need. The Council did factor in redevelopment in that 67,000 replacement units were included in the methodology, in addition to projections based on development on vacant land. These 67,000 replacement units include a factor for redevelopment potential. In addition, it should be noted that requirements to produce affordable housing under the growth share approach are based on actual development, which would include any redevelopment that occurs. Therefore, as redevelopment occurs, affordable housing will be provided. Lastly, N.J.A.C. 5:97-5.6 allows municipalities to seek an adjustment from the growth share projection.

N.J.A.C. 5:97-2.2(e)

COMMENT: To accurately measure real growth, COAH must permit municipalities to subtract residential and non-residential demolitions from certificates of occupancy. The Appellate Division held that if COAH is to allocate affordable housing obligations based on growth share, then the methodology must correlate the municipal affordable housing obligations with actual growth. COAH's individual rules must be consistent with the overall methodology. The regulations should measure actual housing growth and actual job growth between January 1, 2004 and 2018. The [page=5980] commenters disagree with COAH's claim that allowing for subtraction of demolitions "would not be consistent with the Council's growth share methodology, which considered replacement of housing units demolished to be part of the projected housing growth" and with COAH's representation that "the growth share methodology will not disproportionately burden any one municipality." The methodology does not take into account demolitions at the municipal level, and a municipality with many demolitions and replacements will have its growth share obligation significantly increased, even though its net growth is no different than that in a neighboring municipality in which demolitions did not take place. Such a system of allocating affordable housing obligations does not reflect actual growth

and can disproportionately burden a municipality.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: This provision should be expanded to require that the implementation schedule include information about the measures that must be taken to resolve various system capacity constraints (including, but not limited to, sanitary sewerage and water supply); the responsible entity(s); how said measures will be funded; and the timeline for completion of capacity improvement measures. This section also specifies that implementation schedules "consider the economic viability of the proposed mechanism, including the availability of public subsidies, development fees and other sources of financing." It is recommended that the use of local market analyses be added as a permitted tool for municipalities to use when considering economic viability. The commenter is very concerned that the willingness of an owner to sell land for affordable housing development not be used as the sole factor in defining realistic opportunity, since individual circumstances can change in unforeseen ways.

RESPONSE: The Council agrees that infrastructure and funding are key ingredients to establishing the most successful affordable housing programs. While these implementation issues are indeed vital, the Fair Housing Act and the proposed rules institute a regulatory process to ensure that municipal and regional land use regulations include realistic opportunities to create a quantifiable number of affordable housing units that corresponds with statewide targets. The municipality is responsible for submitting a plan that meets its overall affordable housing obligation, as set forth in N.J.A.C. 5:97-3. Municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, market to affordable programs, redevelopment, and municipally sponsored programs. The rules also include an option for a municipality to phase certain components of its plan based on the feasibility of the proposed mechanisms.

COMMENT: Just as municipalities may submit an implementation schedule that sets forth a detailed timetable for affordable units to be provided within the period of substantive certification that demonstrates realistic opportunity and a timetable for the submittal of all information and documentation required for each mechanism, municipalities should be permitted to plan for their growth-share obligations in a phased way. The phased submission of housing element and fair share plans would be very appropriate if COAH prohibits municipalities from using municipal projections developed through the State Plan Cross Acceptance Process, Plan Endorsement Process or the Wastewater Management Planning Process whether or not they exceed the projections in Appendix F, Part 2. Furthermore, the phased development and submission of municipal housing elements/fair share plans is strongly recommended for municipalities where significant wastewater, water supply, transportation and public school system capacity constraints have been identified, and for which durational adjustments would otherwise be required. For example, if existing and programmed system capacity available during the first half of the Third Round period (2008 - 2013) can accommodate one-half of a municipality's growth share obligation, then the Phase 1 housing element and fair share plan should include mechanisms that address one-half of the municipality's total obligation. If at any time prior to 2013 the actual growth share approaches or exceeds one-half of the total projected growth share, the municipality should be required to submit a Phase 2 housing element and fair share plan that includes mechanisms that address the balance of the municipality's total growth share obligation.

RESPONSE: The commenter should note that this suggestion would be inconsistent with the rules that became effective on June 2, 2008. Pursuant to N.J.A.C. 5:97-3.2(a)4ii, zoning for inclusionary development, an accessory apartment program, or a market to affordable program must be submitted at the time of petition and implemented within 45 days of the grant of substantive certification. Also, the sites proposed for inclusion in the Fair Share Plan should be environmentally suitable and in accordance with sound land use planning. All sites are subject to the site suitability criteria described in N.J.A.C. 5:97-3.13(b)3 through 5. The portions of these sites slated for development must be free of wetlands, category one waterways, and steep slopes in excess of 15 percent if regulated at the local level. Historic sites will be protected from development. In addition, the Council will adhere to the policies of the DEP, New Jersey Meadowlands Commission, the Highlands Water Protection and Planning Council, and Pinelands Commission when considering the suitability of sites. Pursuant N.J.S.A. 52:27D-314 and N.J.A.C. 5:96-6.3(e), municipalities have 45 days

from the grant of substantive certification to adopt all implementing ordnances, which includes zoning ordinances. Further, the Council recognizes that some mechanisms that are significant sources of affordable housing, such as municipally-sponsored construction and redevelopment, are frequently complex due to the need to establish site control, find a developer or sponsor for the project, obtain funding, and establish economic feasibility. For these reasons, the Council believes that it is appropriate to provide some flexibility with regard to these forms of affordable housing development. The Council believes that realistic opportunity can be demonstrated through the municipality's implementation schedule, which is required at the time of petition pursuant to N.J.A.C. 5:97-3.2(a)4, because the schedule identifies the steps to be taken by the municipality to implement its Fair Share Plan and includes a detailed timetable for units to be provided within the period of substantive certification.

COMMENT: The problem with an implementation schedule is that municipalities cannot predict the economic conditions in future years and whether builders will be willing to build according to the schedule. The "availability of public subsidies" may also change, depending on both economic conditions (for example, collection of realty transfer taxes) and legislative action. The present economic conditions, very different from when these rules were issued in 2004 and 2005, are a case in point. It is true that economic conditions tend to average out over a 10-year period, but a schedule, with targets at least every two years, is more affected by variations in economic conditions. Municipalities can schedule municipal actions, but not when builders actually build, which actually provides affordable units.

RESPONSE: The commenter appears to have confused the Fair Share Plan implementation schedule with the schedule to phase the construction of affordable units with market rate units in an inclusionary development. The implementation schedule permits municipalities to defer the submission of documentation for certain affordable housing mechanisms; however, the provision does not relieve a municipality of its responsibility to implement its Fair Share Plan. Municipalities are required to construct or otherwise provide affordable housing in proportion to actual residential and non-residential development. Therefore, documentation for all affordable housing mechanisms that are addressing the prior round obligation, the rehabilitation share, and the growth obligation up to the first plan review pursuant to N.J.A.C. 5:96-10 shall be submitted at the time of petition. Further, the Council recognizes that some mechanisms that are significant sources of affordable housing, such as municipally-sponsored construction and redevelopment, are frequently complex due to the need to establish site control, find a developer or sponsor for the project, obtain funding, and establish economic feasibility. For these reasons, the Council believes that it is appropriate to provide some flexibility with regard to these forms of affordable housing development. The Council believes that realistic opportunity can be demonstrated through the municipality's implementation schedule, which is required at the time of petition pursuant to N.J.A.C. 5:97-3.2(a)4, because the schedule identifies the steps to be taken by the municipality to implement its Fair Share Plan and includes a detailed timetable for units to be provided within the period of substantive certification. The schedule must be reviewed and approved by the Council prior to substantive certification, and the documentation for a [page=5981] specific mechanism must be submitted no later than two years prior to its schedule implementation. Inclusionary zoning is only one of several mechanisms that can be utilized by a municipality to address its fair share obligation. The Council does not dictate which of these options must be utilized. The commenter should note that if a municipality proposes to zoning as a mechanism to address its affordable housing obligation, it has to demonstrate that the zoning provides a realistic opportunity for the provision of affordable housing for the period of substantive certification. The municipality does not require the developer to build his/her development at any point in time.

N.J.A.C. 5:97-2.2(e) and 2.5(b)

COMMENT: COAH should calculate the actual growth share based upon the number of low and moderate income households generated by non-residential development within each use group. The commenter demonstrated how the number of jobs generating an actual growth share obligation could be adjusted based upon the average monthly wages for employees within each use group.

RESPONSE: The commenter should note that the growth share concept remains unchanged from the rules that became effective on June 2, 2008. Therefore, the comment is outside the scope of this proposal.

COMMENT: The 16:1 ratio is designed to allocate the Prospective Statewide Need, which has accrued over a 20-year period (1999 to 2018), based upon 15 years of employment projections and non-residential development (2004 to 2018). The actual growth share should be adjusted for the difference in these time periods and an adjustment factor of 1.33 (20/15) would be appropriate. Certain use groups create more low and moderate income jobs than others. If this 1.33 adjustment factor is then applied to the commenter's proposed 21:1 ratio, every 28 jobs would create an actual non-residential growth share obligation of one unit.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: COAH should revise the amount of the Prospective Statewide Need attributed to job growth and non-residential development. COAH has derived the 16:1 ratio from its decision to allocate 43 percent of the Prospective Statewide Need to job growth. This is an arbitrary allocation which is not based upon substantial evidence in the record. The only objective criteria which COAH cited in its responses to the comments on the 16:1 ratio in the regulations support lowering the amount of the Prospective Statewide Need attributed to job growth. COAH's reference to residential development occupying 67.5 percent of the developed land in New Jersey is the only objective figure it has referenced on this issue. If this number is accurate, then COAH should attribute, at most, 32.5 percent, rather than 43 percent, of the Prospective Statewide Need to job growth which increases the 16:1 ratio to a 21:1 ratio.

RESPONSE: The Council believes there is ample evidence in the record to support the residential and non-residential allocations. There is a clear direct link between the need for affordable housing and employment growth. The challenge becomes not overburdening either residential or non-residential development. The Council believes that it struck that balance.

COMMENT: The commenter requests that COAH eliminate the actual non-residential growth share obligation, because it is not necessary for COAH to satisfy its mandate, under the Fair Housing Act, that COAH match the housing need to the allocation of this need to municipalities in growth areas as it pertains to non-residential development. The Appellate Division determined that prior case law and the Fair Housing Act "require a match between housing need and allocation of that need to municipalities in growth areas." In the regulations and the amendments, COAH has allocated the Prospective Statewide Need attributed to non-residential development and job growth to municipalities, without the necessity for the actual non-residential growth share obligation and, thus, this actual growth share obligation is unnecessary for COAH to satisfy its mandate under the Fair Housing Act.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: It is both arbitrary and impractical for COAH to impose its growth share obligations on municipalities retroactively. Growth share obligations should be determined by the regulations in effect at the time a municipality enters into a binding developer's agreement with a non-residential developer that provides for affordable housing. Municipalities must rely on the COAH rules in effect at the time they enter into a binding agreement in order to properly plan to accommodate the affordable housing obligation generated by the non-residential development. The commenter represents a municipality that entered into a developer's agreement with the redeveloper of a shopping mall. The agreement relied on the 2004 COAH rules in that it negotiated a payment in lieu representing an 85,000 square foot increase and a growth share obligation of 1 affordable unit for every 25 jobs. The commenter understands that under the Appellate Division's decision, affordable housing obligations should be based on actual growth, but there's nothing in the Court's opinion that dictates that increased growth share obligations be retroactively applied to municipalities that justifiably relied on the 2004 rules in negotiating an agreement that would meet the need generated by the development. It is arbitrary and unreasonable for the proposed regulations to calculate the growth share obligation based on the entire square footage of the shopping center and on modified growth share ratios. The affordable housing obligation generated by this development will increase the municipality's obligation by a factor of 4. The municipality had no opportunity to plan for this eventuality, the agreement cannot be renegotiated, and the municipality has insufficient land and resources in its affordable housing trust fund account to accommodate the increase in the housing obligation.

RESPONSE: The Council proposed a compliance bonus at N.J.A.C. 5:97-3.17 that addresses the commenter's concerns.

COMMENT: The commenter requests that COAH eliminate the actual non-residential growth share obligation, because it will create a disincentive for municipalities to zone for and approve significant non-residential developments, which are vital for job growth and New Jersey's economy. The commenter is concerned that many municipalities will amend their zoning ordinances to substantially reduce or eliminate new office and industrial (warehouse distribution) developments, because these developments will create substantial, actual growth share obligations for municipalities. As the Appellate Division noted in In re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1, 55 (App. Div. 2004), "municipalities are likely to utilize methodologies that are self-serving and calculated to minimize municipal affordable housing obligations" and "municipalities will adopt land use regulations to minimize affordable housing obligations if permitted to do so." Municipalities have wide discretion, through their zoning powers, to determine how much non-residential development they will allow. Accordingly, municipalities will likely minimize their actual non-residential growth share obligation by reducing the permitted floor area ratio for offices and other non-residential uses or by eliminating them as permitted uses altogether. Therefore, municipalities will effectively control their actual growth share obligation attributable to non-residential development, in violation of the holding of In re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. at 52. This reduction in permitted commercial development will hurt New Jersey's tax base as commercial property owners appeal the assessments of their properties, and it will hinder bringing new jobs into New Jersey and retaining existing jobs as New Jersey companies grow and need to expand their operations. As a result, it will harm New Jersey's already slowing economy. The commenter is concerned that the actual non-residential growth share obligation is an additional--and unnecessary--hurdle to job growth and a stronger New Jersey economy.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: The commenter requests that COAH eliminate the actual non-residential growth share obligation to reflect the legislative policies underlying the adoption of the P.L. 2008, c. 46. In the original Round Three regulations, municipalities incurred an actual growth share obligation based upon the amount of non-residential development they experienced and municipalities were permitted to require non-residential developers to build affordable housing units within entirely non-residential developments in order to meet this obligation. In response to the original Round Three regulations, many municipalities adopted ordinances requiring developers to meet their entirely non-residential development's actual growth share obligation either by building the number of affordable housing units within the non-residential development required to meet the non-residential development's growth share obligation. Or by funding the number of affordable units required to [page=5982] meet the non-residential development's growth share obligation. Since P.L. 2008, c. 46 now so limits municipal power to impose an affordable housing contribution on non-residential development, COAH should re-evaluate the necessity for the actual non-residential growth share obligation and the means available for municipalities to satisfy the actual non-residential growth share obligation.

RESPONSE: P.L. 2008, c. 46 will be the subject of a future rule amendment.

COMMENT: COAH should eliminate the actual growth share attributable to non-residential development, because it has not relied upon any accepted planning methodology to determine that every 16 jobs generate the need for an affordable housing unit to be built within the municipality where the non-residential development is located." When the New Jersey Supreme Court reviewed the imposition of affordable housing development fees on non-residential development, in *Holmdel Builders Ass'n v. Township of Holmdel*, 121 N.J. 550, 572 (1990), the Court did not find that there was a "stringent nexus between commercial construction and the need for affordable housing," and determined only that there was an "actual, albeit indirect and general, impact that such non-residential development has on both the need for lower-income residential development and on the opportunity and capacity of municipalities to meet that need." In its attempt to quantify the link between non-residential development and the need for affordable housing, COAH has produced no studies or reports that demonstrate that every 16 new jobs create the need for one affordable unit to be built within the municipality. The 16:1 ratio is not based on any historical analyses or studies relating to the

actual demand for affordable housing arising from non-residential development. Nothing in COAH's record supports its conclusion that every 16 new jobs created by new non-residential development actually creates a need for one affordable housing unit to be built within the municipality where the non-residential development is located. Instead, COAH developed the 16:1 ratio as a method to allocate the projected non-residential growth share obligation to municipalities.

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-2.3(a)2 and 3

COMMENT: From the January version of the rules (adopted June 2) to the proposed amendments published in May, the Council made large changes in its projections (for instance, the commenter's community had a 24 percent increase in housing projection and a 74.6 percent increase in employment projection), apparently by a process which included arbitrary shifting of housing and employment projections from one community to another. The commenter seeks assurances that these projections have objective validity and that they will not again be arbitrarily changed.

RESPONSE: The projections included in the rule proposal do, indeed, have objective validity. The projections reflect patterns of municipal growth as observed in the past tempered by the amount of vacant land available for future development. The updated growth projections are based on municipal level housing and employment growth observed over the period from 1993 through 2006. The data used to calculate historic growth rates have been updated through 2006. The municipal-level housing data have been updated through 2006 using certificate of occupancy information and information on demolitions, and employment data have been updated using 2006 data from the New Jersey Department of Labor and Workforce Development. As a result, the Council has calculated new growth rates for the 1993-2006 period based on the updated data, and have recalculated the S-curves (which account for the relationship between a municipality's growth rate and how close to build-out the township is) for each COAH region for both housing and employment. Also, growth constraints have been updated since the January 2008 COAH Appendix F, Task 1 report to account for the most recent draft of the Water Quality Management Rules. These rules further limit growth on more environmentally sensitive areas, and these new limits have been incorporated into our latest projections. The commenter should note that these growth projections are long-term projections, and they may run counter to short-term growth trends experienced by a municipality. In addition, the Task 1 report identifies the method used to prepare the allocations.

N.J.A.C. 5:97-2.3(a)6

COMMENT: Please explain the discrepancy between COAH's growth share projections for employment and housing, the Office of Smart Growth's Cross-Acceptance Projections in the State Plan for employment and housing, and the New Jersey Transportation Planning Agency's projections for employment and housing?

RESPONSE: COAH's growth share projections for employment and housing are based on county-wide projections from the New Jersey Department of Labor and Workforce Development. These are the only publicly available statewide, consistent, county level forecasts that are available for all counties in New Jersey. The projections from the allocation model reflect patterns of municipal growth as observed in the past tempered by the amount of vacant land available for future development The growth forecast uses "S-curves," which account for the relationship between a municipality's growth rate and how close to build-out the township is. The data used to calculate historic growth rates have been updated through 2006. The commenter should be aware that the municipal-level housing data have been updated through 2006 using certificate of occupancy information and information on demolitions, and employment data have been updated using 2006 data from the New Jersey Department of Labor and Workforce Development. As a result, COAH has calculated new growth rates for the 1993-2006 period based on the updated data, and has recalculated the S-curves for each COAH region for both housing and employment.

N.J.A.C. 5:97-2.3(d) and 2.4(a)1

COMMENT: A failure to measure the net increase of residential growth violates the Appellate Division's decision, *In re Adoption of 5:94 and 5:95 by the New Jersey Council on Affordable Housing*, 390 *N.J. Super.* 1, 65 (App. Div.), *certif. denied*, 192 *N.J.* 72 (2007), where the Appellate Division held that COAH must base its growth share methodology on actual, real growth within a municipality, and not based upon a formula or ratio. If an existing residential structure is demolished and replaced with only one residential structure, there has been no new growth. Therefore, COAH should measure the net increase in residential growth.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: COAH must take into account demolitions for residential growth, just as it has for non-residential growth because the premise of the growth share approach is not merely that if a municipality grows, it should have an obligation to grow with affordable housing. In addition, the premise is that it is reasonable and practicable to require municipalities to provide affordable housing in conjunction with new growth. A demolition, followed by reconstruction, does not present a realistic opportunity for a municipality to create affordable housing, as the municipality has no ability to require that the replacement unit become an affordable unit, when the project only allows for the demolition of one unit, followed by the creation of only one unit on the same parcel.

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-2.3(d)2iv

COMMENT: The commenter commends the Council on the proposal in the rule to subtract demolitions of non-residential structures from the overall non-residential development activity. However, the commenter questions why this amendment was not extended to residential units, since the Appellate Division's 2007 decision specifically found such an exclusion to be appropriate. The amendments only allow deduction of non-residential demolitions, but assign a growth share obligation when one dwelling unit is removed and replaced by one dwelling unit, causing growth share to be inflated by the number of replacement units.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: The commenter seeks explanation as why it would be necessary to submit as part of a housing element, demolition permits issued and projected.

RESPONSE: The commenter should note that the requirement to submit demolition permits issued and projected is only required if a municipality wishes to rely upon its own household and employment projections. Every municipality is not required to submit information on demolition permits issued and projected. The commenter should note that [page=5983] jobs lost based on demolition permits issued by square footage of non-residential structures for each use group in N.J.A.C. 5:97 Appendix D may be subtracted from the non-residential growth share obligation.

N.J.A.C. 5:97-2.4

COMMENT: There is an inequity in this rule because there is not incorporated into it a provision for eligibility for credits from N.J.A.C. 5:97-4. The commenter feels this should be corrected.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: The changes in the projected growth share are arbitrary and do not reflect conditions that actually exist. The commenter represents two small, fully-developed municipalities whose projected growth share has increased significantly for no apparent reason. In one fully-developed municipality, the projected growth share has increased by a factor of five. In another, a relatively small growth share obligation has increased by over 80 units. These widely variant projections reflect a fundamental flaw in COAH's methodology and convince municipal officials that COAH is simply picking numbers out of a hat. The projections should be based on accurate data concerning a municipality's actual

realistic growth potential.

RESPONSE: The projections provided in the allocation model reflect patterns of municipal growth observed in the past tempered by the amount of vacant land available for future development. The updated growth projections are based on municipal level housing and employment growth observed over the period from 1993 through 2006. The sample period is long enough to capture both periods of strength and weakness in the local economies and the projected growth is consistent with patterns observed in the past. The growth forecast uses "S-curves," which account for the relationship between a municipality's growth rate and how close to build-out the township is. COAH has calculated S-curves based on the 1993-2006 historic growth, and the capacity limits that were in place in August 2007, before the revised Water Quality Management Rules were put forth. This method allows the S-curves to be consistent with the amount of land that was thought to be available at the time the growth was occurring. However, when running the current forecasts, COAH has used updated capacity limits that do consider the new Water Quality Management Rules. The commenter does not identify the towns he is referring to, so it is not possible to give a specific answer to the comments. However, municipal growth capacity, 2006 existing housing units, and growth rates have all been adjusted since the January report, which may cause changes in municipal level forecasts. The allocations are based on an algorithm, as described in the Appendix F, Task 1 report. The data used to calculate historic growth rates have been updated through 2006. The municipal-level housing data have been updated through 2006 using certificate of occupancy information and information on demolitions, and employment data have been updated using 2006 data from the New Jersey Department of Labor and Workforce Development. As a result, COAH has calculated new growth rates for the 1993-2006 period based on the updated data, and has recalculated the S-curves for each COAH region for both housing and employment. Also, growth constraints have been updated since the January 2008 COAH Task 1 report to account for the most recent Water Quality Management Rules. These rules further limit growth on more environmentally sensitive areas, and these new limits have been incorporated into COAH's latest projections. In addition, these growth projections are long-term projections, and they may run counter to short-term growth trends experienced by a municipality. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which time these differences can be analyzed and necessary adjustments made.

N.J.A.C. 5:97-2.4 and 2.5(e)

COMMENT: The proposed regulations unreasonably force municipalities to plan the growth share obligation COAH assigned even if the municipality can demonstrate that the projections are inaccurate and excessive. For Wall Township, Monmouth County, NJ, COAH's consultant has projected a dramatic increase of 1,320 households during the new regulatory time period. The consultant projects that 6,259 additional units can be constructed in the Township before residential build-out is achieved, and that 21 percent of the units, or 1,320 units, will be constructed between 2004 and 2018. This projection continues to be substantially inconsistent with more accurate and better informed local, on-the-ground-data, and is of particular concern given the small number of residential site plan and subdivision approvals granted in the Township in recent history, the low density of vacant residential land and agricultural land and the Township's own analyses of residential build-out that are based on current, site specific data. The Township projects that build-out in the Township is closer to 574 additional units, which is 5,685 units less than the consultant's build-out projection of 6,259 units. The Township analyzed build-out on a lot-by-lot basis, and the Township's analysis remains substantially lower than the growth allocation assigned by COAH for the 2004 to 2018 period.

RESPONSE: The municipal projections from the allocation model reflect patterns of municipal growth as observed in the past tempered by the amount of vacant land available for future development. The updated growth projections are based on municipal level housing and employment growth observed over the period from 1993 through 2006. The sample period is long enough to capture both periods of strength and weakness in the local economies and the projected growth is consistent with patterns observed in the past. The growth forecast uses "S-curves," which account for the relationship between a municipality's growth rate and how close to build-out the township is. COAH has calculated S-curves based on the 1993-2006 historic growth, and the capacity limits that were in place in August 2007, before the revised Water Quality Management Rules were put forth. This method allows the S-curves to be consistent with the

amount of land that was thought to be available at the time the growth was occurring. However, when running the current forecasts, COAH has used updated capacity limits that do consider the new Water Quality Management Rules. This is appropriate because the revised capacity will impact future growth, but not past growth. The commenter should be further aware that the data used to calculate historic growth rates have been updated through 2006. The municipal-level housing data have been updated through 2006 using certificate of occupancy information and information on demolitions, and employment data have been updated using 2006 data from the New Jersey Department of Labor and Workforce Development. As a result, COAH has calculated new growth rates for the 1993-2006 period based on the updated data, and has recalculated the S-curves for each COAH region for both housing and employment. Also, growth constraints have been updated since the January 2008 COAH Appendix F, Task 1 report to account for the most recent Water Quality Management Rules. These rules further limit growth on more environmentally sensitive areas, and these new limits have been incorporated into the latest projections. In addition, these growth projections are long-term projections, and they may run counter to short-term growth trends experienced by a municipality. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which time these differences can be analyzed and necessary adjustments made.

COMMENT: The proposed regulations unreasonably force municipalities to plan for the growth share obligation COAH assigned even if the municipality can demonstrate that the projections are inaccurate and excessive. In addition to COAH's use of outdated Land Use/Land Cover data from the New Jersey Department of Environmental Protection, there is no way to determine the validity of COAH's growth share calculations because sufficient information has not been provided. No information has been provided on a municipal level regarding the following: 1. The mapped location of land designated as suitable for residential or non-residential growth. 2. The consultant's report indicates that 10 percent of "vacant" land was considered to be suitable for development with non-residential uses, and that the remaining 90 percent was divided between residential and non-residential land use based on "existing relationships" between existing residential and non-residential land use by Census Tract. These "existing relationship" data have not been provided. 3. The interpolation data between the 1997, 1999 and 2003 data sets that was used to adjust the 2002 employment data. 4. The amount of "spill over" growth from adjacent municipalities applied to each municipality. 5. Formulas for the calculation of historic municipal build-out levels. 6. An example of how the municipal employment projections were calculated, including all relevant formulas, interpolations and spill over.

[page=5984] RESPONSE: The projections reflect patterns of municipal growth as observed in the past tempered by the amount of vacant land available for future development. The updated growth projections are based on municipal level housing and employment growth observed over the period from 1993 through 2006. The data used to calculate historic growth rates have been updated through 2006. The municipal-level housing data have been updated through 2006 using certificate of occupancy information and information on demolitions, and employment data have been updated using 2006 data from the New Jersey Department of Labor and Workforce Development. As a result, the Council has calculated new growth rates for the 1993-2006 period based on the updated data, and have recalculated the S-curves (which account for the relationship between a municipality's growth rate and how close to build-out the township is) for each COAH region for both housing and employment. Also, growth constraints have been updated since the January 2008 COAH Appendix F, Task 1 report to account for the most recent draft of the Water Quality Management Rules. These rules further limit growth on more environmentally sensitive areas, and these new limits have been incorporated into COAH's latest projections. The commenter should note that these growth projections are long-term projections, and they may run counter to short-term growth trends experienced by a municipality. In addition, the Task 1 report identifies the method used to prepare the allocations. The process is described in further detail below.

The employment model and the housing model are similar in structure to each other. The employment model, and the housing model work the same way, except for the use of the ratio of population to housing units, for which an example is shown.

Data

The majority of the input data for this model are employment data. These include the 1993, 2002, and 2006

municipal employment levels and the NJLWD 2018 projected county employment levels. As indicated in Section 3 of the Task 1 report, the State government sector is not reported anywhere at the municipal level, so this employment allocation model only covered three sectors: private employment, federal government, and local government. State government employment will be discussed separately. The other input data is non-residential build-out constraints.

Converting Floor Space to Employment

The physical growth capacity in this model is based on the data generated by the NCNBR vacant land study. The data are expressed in terms of gross floor area and are broken down into office, retail, warehouse/industrial, and others/blended for almost all municipalities.

When testing whether the future growth limit is reached with the projected employment level, it is important to translate the gross floor space into employment. Task 4 includes a literature review and a sample survey for New Jersey on employee/floor space ratios by type of uses. Here are the ratios (in terms of number of employees per 1,000 square feet of gross floor space) COAH's consultants initially recommended in Appendix F, Task 4:

- -- Office 3.32
- -- Retail 2.00
- -- Warehouse 1.72
- -- Manufacturing and Industry 1.43

These ratios could be sensitive to the estimated amount of employment based on the potential nonresidential development, so all chosen ratios in the employment allocation model were within the upper and lower bound of those recommended by Task 4. Using an adjustment of eight percent for vacancies and 15 percent for common areas this translates to 2.25 employees per 1000 square feet. This ratio was not identical for all municipalities because their current mix of commercial space varies by municipality.

Growth Rates

Historic growth rate

The historical growth rate is calculated using the 1993 to 2006 employment numbers. Statewide, the historical employment growth rate (excluding the state government sector) is approximately 1.3 percent between 1993 and 2002, but some municipalities experienced annual rates over 15 percent in this period. While the majority of such municipalities had a very small employment base in 1993, some mid-size municipalities (with 1993 employment around 2,000 jobs) like Allendale Borough in Bergen County, Swedesboro Borough in Gloucester County, and Monroe Township in Middlesex County, had annual rates exceeding 15 percent. In other words, these municipalities more than doubled their employment primarily due to new development. Such fast employment growth rates are unlikely to sustain, especially when their growth capacity is being used up. Because of this possibility, COAH's methodology uses a combination of the historical growth rate and the "S-curve" growth rate, which is discussed below.

S-curve, or build-out, growth rate

The "build-out growth rate," also called the "S-curve growth rate," is econometrically estimated by a cross-sectional regression of 1993 to 2006 municipal employment growth as a function of the percentage of the total possible build-out that had already occurred in 1993. As expected, this estimation--discussed in greater detail in Appendix 1 of the Final Report--reveals that growth slows as municipalities approach their build-out capacity.

Procedure

This is an iterative model with a starting point based on historic growth rates, a sequence of intermediate calculations, and a final result. The intermediate steps account for the county control total, the maximum municipal level growth rate, and the capacity of a municipality to accept growth.

In the first step, the initial municipal employment by 2018 was projected based on the average of the historical growth rate and the S-curve Growth Rate. This average is called the "Mean Growth Rate." These rates are indicated in columns [3] - [5] in Table 1 below, and the initial projections are shown in column [7].

Note that in the example, the historical growth rate is negative for seven municipalities in Salem County. However, the build-out growth rate (the "S-curve growth rate") is positive for all municipalities so that the mean growth rate is positive for all but two municipalities.

These initial projections were summed at the county level and compared to county control totals. If the sum of the initial projections for a county exceeds the county control total for the county, the employment of each municipality is scaled down. In the example shown in Table 1, the Initial 2018 Employment Projection is 33,198 jobs, and the county control total is 25,918. This indicates that the initial projections, based on municipal growth information, are too great, and that they need to be scaled back.

The growth of each municipality is also measured against its physical growth capacity (shown in column [10]) to ensure that the build-out level did not exceed 100 percent of its physical development capacity. Each municipality's implied growth rate, was also compared to its maximum growth rate, which is either the historical rate or the S-curve growth rate. In the example, three communities, Elmer Borough, Pilesgrove Township and Pittsgrove Township, have initial projected growth that exceeds the capacity of the municipality. These townships have negative numbers in column [11], which indicates that there is less capacity than there is projected growth. These municipalities are candidates for generating spillover.

The spillover was then estimated and sent to those adjacent municipalities that had the capacity to receive the spillover, either in the same county or out of county. This movement of jobs creates a new estimate of growth for each municipality, and any of the three constraints (county control total, municipal level capacity, and municipal level maximum growth rates) could be violated. The model needs to check the constraints again for each municipality, and make adjustments, and then check again, and make more adjustments. This is the iterative part of the algorithm.

In each round of the allocation of the spillover, each receiving municipality was checked to ensure that the growth increment did not violate the two growth constraints of the model (growth capacity and maximum growth rate).

For counties that had a sum of initial projected employment less than the county control totals, their municipalities would receive cross-county [page=5985] spillover under the same set of constraints. The county total was then compared to the control total. If the county total was still below the control total, the municipality employment was scaled upward and the spillover allocation procedures followed.

This iterative process resulted in a municipal allocation that summed to within 0.4 percent of the total Statewide employment. Each county was close to its control total as well. The remaining 0.4 percent of employment was allocated by proportionately scaling up or down municipalities in each county such that the projections summed to the county control totals exactly and neither the growth rate nor build-out constraints were violated.

For example, in Salem County the initial 2018 employment projection was greater than the 2018 county control total employment projection. Additionally, the initial employment projection exceeded the total physical growth capacity in 2018 in three municipalities. After scaling to the county controls, allocating the resulting spillover from Salem County and other counties, and numerous iterations, the final allocation met the county control total and was below the total physical growth capacity. The final allocation is indicated in column [12] of the example, the capacity is in column [13], and the amount of capacity remaining in 2018 is shown in column [14].

Housing Model

As mentioned previously, the housing model follows the same algorithm as the employment model. However, since NJLWD provides only the population projections, and not housing unit projections, the starting point (1993 housing units) must first be calculated using population to unit ratios from the 1990 and 2000 census and the 1993 population projection from the NJLWD. Table 2 below shows an example from Pittsgrove Township in Salem County. The 1990 and 2000 population to unit ratios are shown in rows [1] and [2] of Table 2. These ratios are interpolated to determine the 1993 population/unit ratio, which is shown in rows [3] to [5]. The 1993 population forecast is divided by this ratio to arrive at the 1993 units. This is the starting point for the calculation of the growth rates. As discussed in the Task 1 report, the ending point is 2006 housing unit information, which was determined using 2000 census information on units, adding in new units as determined by certificates of occupancy, and removing demolished units as determined by demolition certificates. Additionally, the 2000 population to units ratio was set as a constant to determine population projections in the housing model.

Thereafter, the historic, S-curve, and mean growth rates were calculated in the same fashion as the employment model. These rates are shown in rows [11] through [13].

| Table 1: Salem County Employment - Growth Rates, Initial Projections and Final Allocation | | | | | | | | | | | | | |
|---|------------|------------|-------------|-------------|-------------|------------|--------------|--------------------|-----------------|----------------|---------------|---------------|---------------|
| Annual Growth Raties | | | | | | | | | | | | | |
| | | | | | | | | | | | Available | Final | |
| | | | | | | | | | | Total Physical | Capacity in | allocation in | |
| | | | | | | | Initial 2018 | areas and a second | Post-2002 | Growth | 2018 based on | 2018 after | Total Physica |
| | 1993 | 2002 | Historical | | Mean Growth | 2006 | | Total Empoyment | Physical Growth | Capacity in | Initial | multiple | Growt |
| Municipality | Employment | Employment | Growth Rate | Growth Rate | Rate | Employment | Projection | 2018 Projection | Capacity | 2918 | Projection | iterations | Capacit |
| | [1] | [2] | [3] | [4] | [5] | [6] | (7) | (8) | 9 | (10) | [11] | [12] | [13 |
| Alloway Township | 352 | 610 | 7.9% | 3.1% | 5.5% | 713 | 1,185 | | 1,781 | 2,391 | 1,206 | 907 | 2,391 |
| Carneys Point Township | 1,508 | 2,055 | 7.6% | 3.7% | 5.6% | 2,992 | 5,011 | | 14,655 | 16,710 | 11,699 | 4,048 | 16,710 |
| Elmer Borough | 1,415 | 1,573 | 1.5% | 0.2% | 0.8% | 1,697 | 1,869 | | 185 | 1,758 | (111) | 1,697 | 1,758 |
| Elsinboro Township | 513 | 137 | -6.6% | 3.8% | -1.4% | 76 | 64 | | 12 | 148 | 85 | 76 | 149 |
| Lower Alloways Creek Township | 1,959 | 992 | -5.8% | 3.9% | -0.9% | 470 | 416 | | 2,013 | 3,005 | 2,589 | 470 | 3,005 |
| Mannington Township | 1,234 | 971 | -2.3% | 3.5% | 0.6% | 672 | 938 | | 2,806 | 3,777 | 2,839 | 872 | 3,777 |
| Oldmans Township | 826 | 693 | -2.3% | 3.7% | 0.7% | 582 | 631 | | 2,399 | 3,092 | 2,461 | 582 | 3,092 |
| Penns Grove Barough | 1,227 | 1,141 | -0.6% | 1.4% | 0.4% | 1,133 | 1,191 | | 447 | 1,588 | 397 | 1,133 | 1,588 |
| Pennsyllie Township | 5,208 | 4,278 | -1.6% | 2.5% | 0.3% | 3,960 | 4,113 | | 3,710 | 7,988 | 3,875 | 3,960 | 7,968 |
| Pliesgrove Township | 273 | 1,007 | 24,1% | 1.6% | 12.8% | 1,129 | 2,868 | | 723 | 1,730 | (1,138) | 1,528 | 1,730 |
| Pittsgrove Township | 920 | 2,781 | 17.7% | 1.3% | 9.5% | 3,042 | 6,523 | | 1,543 | 4,324 | (2,199) | 3,777 | 4,324 |
| Quinton Township | 176 | 148 | -0.5% | 4.2% | 1.8% | 163 | 199 | | 2,626 | 2,774 | 2,575 | 178 | 2,774 |
| Salem City | 2,939 | 3,151 | 0.8% | 1.9% | 1.4% | 3,262 | 3,798 | | 2,506 | 5,857 | 1,859 | 3,370 | 5,657 |
| Upper Pittagrove Township | 515 | 1,010 | 11.4% | 2.5% | 7.0% | 1,280 | 2,353 | | 1,952 | 2,962 | 609 | 1,518 | 2,962 |
| Woodstown Borough | 1,868 | 1,690 | 0.5% | 1.6% | 1.2% | 1,787 | 2,039 | | 1,300 | 2,990 | 951 | 1,804 | 2,990 |
| Total | 20,732 | 22,237 | | | | 23,158 | 33,198 | 25,918 | 38,658 | 60,895 | 27,697 | 25,918 | 60,595 |

| Sour | ONE: | | |
|------|--|--|--|
| [1] | 1993 Employment: NJLWD | | |
| (2) | 2002 Employment : N.J.WO | | |
| [39] | Historical Growth Rate : Yearly Growth from 1993 to 2006 | | |
| [4] | S-curve Growth Rate: 1993 to 2006 (See Appendix A in Final Report) | | |
| [5] | Mean Growth Rate: Average of Historical Growth Rate and S-curve Growth Rate | | |
| [6] | Initial Employment Projection : 2006 Employment * [1+(mean growth rate * 12)] | | |
| [7] | NJLWD | | |
| [8] | - 问 | | |
| [9] | Post-2002 Physical Growth Capacity : | | |
| [10] | Total Physical Growth Capacity: Post-2002 Physical Growth Capacity + 2002 Employment | | |
| [11] | = [10] - [7] | | |
| [12] | Task f Report | | |
| [13] | -[10] | | |
| [14] | - [13] - [12] | | |

Click here for image

[page=5987] **Table 2**

| Calculation of Growth Rate for Pit | tsgrove Township | | |
|--|------------------|-------|-------------|
| | | | Population/ |
| | Population | Units | Units |

| [1] | 1990 | 8,121 | 2,788 | 2.91 |
|------|---|-------|-------|--------|
| [2] | 2000 | 8,893 | 3,155 | 2.82 |
| [3] | Difference between 1990 and 2000 pop. /unit ratio | | | -0.094 |
| [4] | Annual change in population /unit ratio | | | -0.032 |
| [5] | 1993 Population /unit ratio | | | 2.89 |
| [6] | 1993 Population | | | 8,417 |
| [7] | 1993 Units | | | 2,918 |
| [8] | 2006 Units | | | 3,469 |
| [9] | 2006 Units - 1993 Units | | | 551 |
| [10] | Percent Increase from 1993 to 2006 | | | 19% |
| [11] | Historical Growth Rate | | | 1.5% |
| [12] | S-curve Growth Rate | | | 0.5% |
| [13] | Mean Growth Rate | | | 1.0% |

N.J.A.C. 5:97-2.4 and 2.5

COMMENT: Mandating that municipalities devise a plan for 15 years is far too long, especially with a down-turn in the real estate market and the economy. By creating a plan for such a long period of time, and to have a viable plan under the rules, a municipality must identify land that is suitable for the creation of affordable housing well in advance of actually purchasing the property and constructing the project. By identifying specific parcels before the parcels have been purchased, and more often, before the property owner has even been approached for purchasing the property, COAH requires municipalities to place a "red flag" on these parcels, which may never be acquired, thereby exposing municipalities to possible temporary takings claims.

RESPONSE: The Council does not dictate how a municipality must address its affordable housing obligation. The

municipality is responsible for submitting a plan that meets its overall affordable housing obligation. Municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, market-to-affordable programs or reconstruction programs. The adjustment process was intentionally designed to create predictability for all parties. The Council does not believe that the housing obligation should vary based on the response chosen by the municipality. Municipalities are required to construct or otherwise provide affordable housing in proportion with actual residential and non-residential development. In addition, Council's rules provide flexibility in addressing the affordable housing obligation by providing an option for municipalities to phase certain components of its plan based on feasibility of the proposed mechanisms. In this case, a detailed implementation schedule is required, which includes deadlines for submission of documentation to the Council.

COMMENT: COAH should allow municipalities to calculate growth share for units and jobs realized during the time period from January 1, 2004 through the formal date of adoption of the proposed third round rules in accordance with the ratios set in the previous third round regulations. Municipalities should be subject to a growth share of one affordable unit for every eight market rate units constructed and one affordable unit for every 25 jobs realized during the time period from January 1, 2004 through the date of formal adoption of the proposed third round rules. If the proposed ratios of one affordable unit for every four market rate units constructed and one affordable unit for every 16 jobs realized are imposed upon municipalities for units constructed prior to the adoption of the proposed regulations, this retroactive requirement would punish municipalities for abiding by the regulations in effect at the time.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: COAH should permit municipalities to subtract residential demolitions from their growth share projections in order to base the growth share upon net growth. According to the rule, the subtraction of demolitions from projected and actual residential development activity is not permitted. However, the residential demolition/rebuild scenario must be included as an exclusion for any COAH obligation because it does not demonstrate growth. COAH should permit municipalities to subtract residential demolitions from their growth share projections in order to base the growth share upon net growth. For example, if two small single-family homes are torn down and replaced with one large home the net result is a loss of one household from that municipality. However, under the proposed amendments there is a net increase in residential growth by one unit because you cannot subtract the two demolitions that took place. Based upon the information provided above, the growth share methodology included within the proposed amendments results in an inaccurate and distorted view of residential growth.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: COAH must repeal any provision of its rules that diminishes the 1999-2018 housing obligation based on compliance with the 1987-1999 housing obligation. The rule is hostile to the interests of low and moderate income households; it rewards intransigence. The rule provides for a reduction of the 1999-2018 housing obligation even if the affordable housing is never built. Thus, although the projections superficially result in an allocation of 103,294 units, the projected growth share of each municipality will be a function of how many inclusionary developments are developed or are projected to be developed after 2004. Pursuant to the rule, municipalities that, for whatever reason, do not comply with the 1987-1999 housing obligation until after 2004 receive credit toward the 1987-1999 housing obligation and a reduction to their 1999-2018 housing obligation. The rule provides an unlimited double credit, in addition to rewarding delay and obstruction.

RESPONSE: This comment is outside the scope of this rule proposal.

COMMENT: COAH should exclude jobs from the growth share which are created by those nonresidential uses that are excluded from the payment of the Statewide Nonresidential Development Fee. The recent adoption of P.L. 2008, c. 46 prohibits the imposition of any growth share obligation to certain nonresidential uses and exempts certain of the same uses from the Statewide Non-Residential Development Fee. The proposed rule, however, continues to require that the jobs from such uses generate a growth share obligation; thus imposing an obligation upon the municipality without

allowing the municipality to recapture any funds or other commitment from the developer, whether or not a compensatory benefit is granted. In some cases, these obligations may be significant, and require the municipality to pay to create the affordable housing units mandated by the obligation resulting from such developments.

RESPONSE: P.L. 2008, c. 46 will be the subject of a future rule amendment.

N.J.A.C. 5:97-2.4(a)

COMMENT: This rule should be revised to clarify that if an inclusionary project with a set aside was included in a Judgment of Repose or Compliance by the Superior Court then the market rate units will be excluded from a municipality's growth share calculation even if the set aside was less than 15 or 20 percent.

RESPONSE: The rule has been written with intentionality to limit the number of exclusions for market-rate units in second round inclusionary developments and no clarification is therefore required. Market rate units in prior round inclusionary developments are excluded from a municipality's growth projection to the extent that the market-rate units were built subsequent to January 1, 2004 and the set-aside for affordable [page=5988] units followed the standards in place during the second round. Specifically, owner-occupied units are excluded in total if the development included a minimum set-aside of 20 percent which equates to an exclusion of four market-rate units for each affordable unit. Market-rate rental units may be excluded when densities of at least 10 units per acre and a decreased set-aside of 15 percent were used as incentives to encourage the development of rental units. This equates to an exclusion of 5.67 market-rate units per affordable unit. Lower set-asides do not bear a relationship to the Council's second round rules and the corresponding market-rate units are therefore not permitted as exclusions from a municipality's growth projections.

N.J.A.C. 5:97-2.4(a) and 2.5(a)

COMMENT: The methodology is flawed because COAH's regulations treat all certificates of occupancy as new units; however, the certificate of occupancy data that municipalities are required to report to the State does not distinguish between certificates of occupancy issued for new units and certificates of occupancy issued for the construction of additions to residential units, such as bathrooms, living rooms, bedrooms, and other living space that does not add an additional residential unit. Certificates of occupancy of this type are also issued for height additions, which do not create an additional residential unit. The current regulations do not distinguish between those certificates of occupancy that are merely additions to existing units and those certificates of occupancy that are issued for actual new units.

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-2.4(a) and 5.1

COMMENT: There is an internal inconsistency in COAH's approach between (i) the vacant land adjustment policy and procedure, which has been part of COAH jurisprudence for decades, and (ii) the responsibilities created by the growth share requirements. When COAH does a vacant land analysis, the purpose has always been to identify the realistic development potential. COAH does not factor in the impact of demolitions when determining the realistic development potential in a community because a tear down/rebuild does not present a realistic opportunity to create more affordable housing. Yet, COAH's approach to growth share presumes that tear downs/rebuilds do indeed represent a realistic opportunity for a municipality to create affordable housing. That is certainly not the case when individual units are torn down and a new unit is built in its place. Thus, the obligations created by the growth share regulations create are inconsistent with the obligations created by the vacant land adjustment regulations.

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-2.4(a) and 5:97 Appendix F

COMMENT: COAH continues to rely on erroneous vacant land data in allocating projected need. The commenter represents a municipality located mostly in the Pinelands. COAH has significantly overestimated the amount of vacant, developable land within the municipality. Specifically, the following land was considered as vacant and developable: land owned and used by the high school; a municipally-owned park; State-owned right-of-way along a major highway; a five-acre parcel near the center of town that has already been zoned for a 100 percent affordable development; land owned by and used by an industrial park; over 2,300 acres in the Pinelands, none of which can be developed for high density housing and some of which has already been developed with single-family dwellings on large lots; a 200-acre farm that is essentially land-locked because it is surrounded by wetlands; over 200 acres of an airport and land adjacent thereto in a no-fly zone; over 130 acres that has already secured approval for single-family dwellings on three-to five-acre lots; a 100-acre inclusionary development project. The absence of vacant developable land within the municipality, combined with its location in the Pinelands and the exhaustion of existing sewer capacity, has resulted in very little residential growth, consisting of 76 residential certificates of occupancy issued between 2004 and the present date. Yet COAH projects the construction of well over 800 residential units between 2004 and 2018. The municipality should not have to undergo the time and considerable expense of seeking an adjustment with taxpayer funds (the municipality has already allocated most of the limited funds in its trust fund account for 100 percent affordable projects). It is COAH's responsibility, not that of individual municipalities, to accurately determine the amount of vacant developable land located within growth area municipalities. In re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1, 54 (App. Div. 2007). This fundamental responsibility should not be passed on to individual municipalities.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and NJ Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. This local data also reflects growth that has occurred since 2002, and is thus not directly comparable to COAH's growth estimates for the period 2004-2018. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a statewide basis in several years, and it hopes to use this more preferred and accurate methodology in the future. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which these differences can be analyzed and necessary adjustments made.

N.J.A.C. 5:97-2.4(a)1i

COMMENT: This rule should be amended to match the language in N.J.A.C. 5:97-2.4(a)1ii, adding the phrase, ". . or are eligible for credit pursuant to N.J.A.C. 5:97-4 toward a municipality's prior round obligation."

RESPONSE: The Council believes an amendment is not necessary since affordable housing units eligible for credit pursuant to N.J.A.C. 5:97-4 do not generate an affordable housing obligation.

N.J.A.C. 5:97-2.4(a)1ii

COMMENT: COAH should allow a municipality to subtract market rate units in an inclusionary development approved in the first or second rounds, regardless of whether or not the affordable units are constructed within the municipality or not. It is unfair for COAH, after having previously approved a plan that created affordable units outside the municipality, to effectively punish the municipality by increasing its affordable housing obligation for implementing that very same plan.

RESPONSE: The commenter should note that to allow the subtraction of units transferred via a regional

contribution agreement would be inconsistent with the growth share methodology since the units are not created within the municipality and would represent a dilution of affordable housing need.

COMMENT: The effect of this rule is that any inclusionary developments that were approved with a lower set aside will accrue an additional obligation. For example, if a development was approved in good faith to comply with prior round obligations with a set aside of 11 out of 100 for sale units, the first 55 units could be deducted from the growth projection, but the remaining 45 units would accrue a growth share obligation to the municipality. The municipality would likely have to expend funds to meet this additional obligation, contrary to the requirements of the Fair Housing Act.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: Market-rate units in a second round inclusionary development with a 20 percent set-aside should not attribute a growth share obligation if the development was part of the municipality's second round compliance plan. Exclusion of the market-rate units should not be conditioned upon COAH certification of the plan. The commenter suggests that the rule be amended to exclude a growth share obligation for market-rate units in an inclusionary development that either received credit in a first or second round certified plan or is eligible for credit toward a municipality's prior round obligation.

[page=5989] RESPONSE: The commenter should note that N.J.A.C. 5:97-2.4(a)1ii excludes market-rate units in an inclusionary development that either received credit in a first or second round certified plan or is eligible for credit toward a municipality's prior round obligation from a municipal growth share obligation.

N.J.A.C. 5:97-2.4(b) and 5:97 Appendix D

COMMENT: In many instances, the use group classifications in Appendix D do not reflect actual job growth. The use group classifications should be presumptions only, which municipalities should be entitled to rebut by demonstrating that the non-residential development does not generate jobs. The commenter represents a municipality which intends to issue a certificate of occupancy for a new volunteer firehouse. The construction of the firehouse will generate few, if any, permanent jobs since the facility will be staffed primarily by volunteer fire fighters. COAH must permit municipalities to document actual job growth. In *re Adoption of N.J.A.C. 5:94 and 5:95*, 390 *N.J. Super.* at 64-65.

RESPONSE: Actual construction is used as a growth indicator because knowing where new work space is being built and how much is a stable and timely measure of growth in a municipality. Moreover, municipalities currently track these construction data through building permits and certificates of occupancy. The Council believes that by using the updated Appendix D, the Council is complying with the Appellate Division decision, by addressing the Court's concerns that Appendix D had the potential to be arbitrary. The Council hired consultants to conduct a survey to investigate whether Appendix D was accurate and updated Appendix D accordingly. The consultants also conducted a national literature review and factored these findings into the survey results. In compliance with the court's directive, COAH and its consultants explored the possible alternatives for projecting future job growth. While NJDLWD data is available for current jobs, COAH has determined that there is no accurate method for linking future job growth to non-residential land use patterns other than the use of applying the Appendix D method of using projected construction/use to jobs created. This is supported by the consultants and their findings. Additionally, The Council considers waivers to its regulations pursuant to waiver criteria enumerated in N.J.A.C. 5:96-15. For example, if a municipality seeks to submit actual jobs, they may submit documentation used to obtain financing for operations, that is, business plan or like documentation, for all occurring non-residential development where there is a 10 percent difference between the actual jobs and the number of jobs determined through the Appendix D jobs to square footage ratio. This can be submitted in the form of a certification from the developer(s) or business owner(s) if one exists. The municipality may submit this data at petition if they are submitting actual jobs to date. Otherwise, the municipality may submit actual data for all occurring non-residential development at annual monitoring if there is a 10 percent difference in the number of jobs

determined through the Appendix D jobs to square footage ratio and the actual growth that occurs from non-residential development.

COMMENT: Non-profit hospitals should not generate a growth share obligation. Appendix D exempts a number of uses from a growth share obligation, such as schools grades kindergarten through 12. It is arbitrary to exempt schools but at the same time attribute a growth share obligation to other non-profit public or charitable facilities that serve a compelling public interest. Non-profit hospitals fall within this classification, and should be exempt from generating a growth share obligation. Under P.L. 2008, c. 46, the expansion of a non-profit hospital is exempt from the payment of the development fee, yet Appendix D attributes a significant growth share obligation to non-profit hospitals. Unless they are exempt, municipalities will resist the expansion of these vitally-needed and financially burdened facilities. This represents terrible public policy as well as representing an arbitrary distinction between schools and hospitals.

RESPONSE: The Council's methodology is predicated on the premise that development generally provides employment, and, therefore, generates a corresponding need for affordable housing and are, therefore, included in growth share. Hospitals and schools are part of the employment growth of a community. However, the Council determined that it was appropriate to exempt kindergarten through grade 12 schools because of the inequity of imposing an obligation upon public school systems that are expanding because of increasing school enrollment tied to new development. Continuing to impose a growth share obligation on the expansion of public school systems would lead to a constant cycle of new development and school expansion that is not sustainable. In regards to hospitals, the Council determined that it was appropriate to exclude the replacement square footage of hospitals relocating to another municipality within the same COAH region on the premise that those jobs do not represent growth, but a relocation of existing employment. Nevertheless, a hospital expansion beyond the existing square footage may represent new growth and as such is subject to growth share. Communities benefit from the employment, medical and other services provided for residents. Those who work at these places of employment need housing locally. It is good public policy to encourage housing near jobs and services. Hospitals are part of a health-care industry that is one of the fastest-growing industries in New Jersey and has been targeted for growth as part of the State's Economic Growth Strategy. Proximate laboratories and physicians' offices also employ local people. The value of the private-sector structures they occupy adds to the tax base of the community. This value helps pay for local school and municipal costs. Many of the people who work at these support facilities also require housing. Finally, the relationship between job growth and the need for affordable housing is not affected by whether or not the job is located within a facility that is or is not tax-exempt.

N.J.A.C. 5:97-2.5

COMMENT: COAH's retroactive application of proposed residential and non-residential growth share ratios (one to four residential units and one to 15 nonresidential jobs) to January 1, 2004 unfairly and inequitably punish Mount Laurel Township and other New Jersey municipalities, who relied upon the regulatory growth ratios (one to nine residential units and one to 25 nonresidential jobs) in place under the then existing Third-Round Regulations in planning and zoning for its future growth and development. Under legal and equitable principles of the "Time of Decision Rule," the revised regulations should provide that the growth share ratios in effect at the time a development application was granted preliminary approval should be controlling. The proposed compliance bonus does not provide an adequate remedy to address this issue because *Mount Laurel* does not control the timing of when a developer pursues development approvals and construction.

RESPONSE: The Council proposed a compliance bonus at N.J.A.C. 5:97-3.17 that addresses the commenter's concerns.

COMMENT: COAH's proposed residential and non-residential growth share ratios should not be made retroactive to January 1, 2004. It is impossible for municipalities to go back to developers to collect additional funds for affordable housing after the buildings have been built and approved. The huge cost burden for the new, but retroactive, affordable housing requirement will fall on local property taxpayers--many of whom cannot afford any additional taxes. This will have the perverse consequence that affordable housing costs will drive out any local property tax owners at the same

economic level that affordable housing is meant to serve. These displaced residents can't even be given priority for the new affordable housing because that housing is distributed on a lottery basis to applicants from all over the state. COAH calls upon municipalities to do their "fair share." Imposing unrecoverable costs retroactively on a community that can't afford them is anything but fair and discredits the entire affordable housing program in the eyes of the public. The League of Municipalities has pointed out that the Third Round COAH Rules impose "Negative and overwhelming burdens on the taxpayer in violation of the Fair Housing Act, which specifically provides that a municipality shall not be required to raise or expend municipal revenue in order to provide low and moderate income housing." These new, but retroactive, third round costs are just some of the COAH related affordable housing costs that are in violation of the Fair Housing Act.

RESPONSE: The Council's approach regarding the starting point for the calculation of growth remains unchanged from the December 20, 2004 adopted third round rules and was not overturned by the Appellate Division in its 2007 decision. The methodology employed by the Council identifies need based on household formation from 1999 to 2018 and delivers this need based on a compressed delivery period from January 1, 2004 through December 31, 2018. In addition, municipalities have a [page=5990] myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, market to affordable programs, redevelopment, and municipally sponsored programs. The rules also include an option for a municipality to phase certain components of its plan based on the feasibility of the proposed mechanisms.

COMMENT: The credit for demolition of non-residential structures, but not for residential structures, is problematic, particularly in redeveloping cities that need to replace their aging substandard housing stock. Therefore, the demolition of residential structures should be subtracted when calculating a municipality's growth share obligation, particularly in State Aid Municipalities and areas that have been determined as areas in need of redevelopment pursuant to N.J.S.A. 40A:12A-1.

RESPONSE: This comment is outside the scope of the rule proposal.

COMMENT: Replacement hospitals, even if crossing a housing region, should be an exempted use group. An exemption for hospitals, particularly replacement hospitals that may or may not be in the same housing region, is requested. The regional nature of such facilities precludes the strict assignment based on housing criteria which has little to do with the service area of a hospital or skilled nursing facility. The short relocation distance in this instance will result in a mere shift of the existing workforce closer to where employees live. This should not generate any additional obligation to Plainsboro. Furthermore, the relocation of the hospital is less than three miles from its present location. The hospital and rehabilitation facility will benefit patients with improved access along a major roadway (US 1) and will make it easier for employees to get to work. Estimates indicate the number of employees will not increase even though the new facility will be larger. This is because the increase in floor space will be devoted to larger diagnostic areas, treatment areas, and single patient rooms.

RESPONSE: The rule currently requires that only the square footage of hospital use built above and beyond the replaced structure is subject to growth share. The Council has elected not to provide a full growth share exemption at this time as, according to the NJDLWD Division of Labor Market and Demographic Research, this sector is expected to be in the top seven of industries with the greatest employment growth between 2004 and 2014. In addition, a review of the New Jersey Construction Reporter revealed that certificates of occupancy were issued for 5,007,165 square feet of I-2 use groups between 2004 and 2008. Notwithstanding, hospitals experiencing expansions may submit a waiver to the Council demonstrating that the expansion does not result in additional job increases. In addition, where the relocated hospital facility is not within the same COAH region, but is within close proximity of the existing facility, for example, in an adjacent municipality, the Council may entertain waivers to this requirement.

COMMENT: The commenter continues to object to COAH's proposed residential and non-residential growth share ratios being retroactive to January 1, 2004. The commenter understands that the proposed compliance bonus (at N.J.A.C. 5:97-3.17) is meant to provide an offset for prior third round developments which were approved at the

previous COAH growth share ratio of one per eight housing units and one per 25 jobs, but this compliance bonus does nothing to solve the significant dilemma for towns with previously approved non-residential development. A key component of the new compliance bonus is that the affordable units must be built on-site. In multiple municipalities, this would have led to inappropriate land use planning to have affordable housing only on-site and alongside incompatible land uses. The retroactive nature of COAH's proposed rules will impose a tremendous affordable housing burden on these municipalities **after** they have already granted non-residential development approvals. Once again, COAH is attempting to retroactively attach an affordable housing requirement to such approved developments without permitting the municipality an opportunity to have the developer address their impact on growth share. This impact is even more magnified now that the Roberts' Bill (P.L. 2008, c. 46) was enacted into law limiting the non-residential developer payment to a 2.5 percent development fee.

RESPONSE: The Council's approach regarding the starting point for the calculation of growth remains unchanged from the December 20, 2004 adopted third round rules and was not overturned by the Appellate Division in its 2007 decision. The methodology employed by the Council identifies need based on household formation from 1999 to 2018 and delivers this need based on a compressed delivery period from January 1, 2004 through December 31, 2018. In addition, P.L. 2008, c. 46 will be the subject of a future rule amendment.

COMMENT: This rule should be revised to permit a municipality to subtract from its actual growth share obligation all demolitions. In municipalities, there are many instances where a property owner removes an old, out-of-code dwelling unit and replaces it with a new, modern up-to-code unit. This is especially the case in the areas along the Atlantic Ocean and Barnegat Bay where FEMA's minimum flood elevation level is resulting in many property owners removing these units and replacing them with units at or above the minimum flood elevation. What possible rationale could support the fact that a municipality would then get a growth share obligation for the certificate of occupancy issued in such a circumstance?

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-2.5 and 6.4

COMMENT: A review of COAH's rulemaking indicates that COAH is more concerned about containing the private sector's profit and catering to municipal concerns regarding the concept of actual growth share than creating a realistic opportunity. The following comment and response are revealing:

COMMENT: Since what has been traditionally been referred to as "inclusionary development" and what is presently referred to as "growth share" are now effectively the same thing, there is no way for a municipality to "get ahead" in the quest to meet its affordable housing obligations. Therefore, there is no incentive for a municipality to increase the density on a suitable parcel in order to produce more affordable housing units. If a municipality increases the density on a parcel in order to create an inclusionary development, the growth share obligation increases accordingly at the four to one ratio, so nothing is gained from a compliance standpoint. There needs to be a mechanism for municipalities to catch up, especially with the retro-active growth share back to January 1, 2004. An alternative may be to allow a municipality to subtract the additional growth share that would accrue from the market units if the density is increased to permit an increase in the overall number of affordable units.

RESPONSE: The standards included in the rule are minimum standards and municipalities have always been permitted to provide higher density bonuses as an incentive to provide higher set-asides providing a realistic opportunity is created. In adopting zoning to address a public benefit such as providing affordable housing, municipalities must give due consideration to both the costs of providing the public benefit and the benefits being provided to those on whom it relies to assist in accomplishing public policy goals. Density bonuses for affordable housing should be adequate enough to offset the costs of producing affordable housing yet not be so great as to result in the unintended consequence of excessive windfall profits to developers. With this balance in mind, the Council will consider a rule amendment to reflect minimum presumptive densities for inclusionary zones based on SDRP Planning Areas.

The commenter's concern about "catching up" is based on N.J.A.C. 5:97-2.5 which requires an increase from the projected growth share if growth exceeds COAH's projections of growth. COAH's response is clear that COAH is more concerned about providing a mechanism for municipalities to "catch up" and regulating what it considers excess profit from the private sector than in creating a realistic opportunity. COAH could have and should have addressed the municipal concern about "catching up" by abandoning the entire growth share concept. It would be enough to allocate the State's housing need of 115,666 and require municipalities to address it. The prospect of a continually changing number based on growth discourages municipalities from working with the private sector and makes the production of affordable housing less likely. If COAH does not abandon the concept of growth share, it must not include inclusionary developments that respond to the 1999-2018 housing obligation in the calculation of "actual growth share." The concept of regulating windfall profits shows a lack of understanding of the development industry. The construction of housing is a high risk [page=5991] business involving expectations of investors, builders and consumers. Some projects work quite well and some do not. COAH certainly has no idea of which development proposals will work well and which will be a disappointment. COAH has not even performed a study that indicates its increased set-asides are viable. It is clear that COAH's increased maximum set-asides are a vehicle to allow a municipality to catch up with its growth share without regard to economic realities. COAH has demonstrated once again that it is willing to sacrifice realistic opportunity in order to assuage the concerns of the municipalities that participate in the COAH process.

RESPONSE: Comments on responses to comments made on the Council's previous rule adoption and the methodology used to determine and allocate affordable housing need are outside the scope of the current rule proposal. The proposed amendments and rules seek to create predictability and certainty for all parties and represents a return to presumptive set-asides and densities as recommended by numerous commenters. The proposal includes presumptive densities and set-asides linked to State Development and Redevelopment Plan (SDRP) planning area and availability of sewer and water. Different densities and set-asides are provided for sale and rental housing.

N.J.A.C. 5:97-2.5(a)

COMMENT: COAH's failure to permit the exclusion of Third Round inclusionary developments from the residential growth share calculation eliminates inclusionary development as an effective compliance mechanism for many municipalities. Because the Third Round site market units increase the growth share, all of the on-site affordable units must be used to satisfy the additional growth share obligation created by the development itself and therefore cannot be used for other purposes. The result is that municipalities cannot effectively use inclusionary developments to satisfy their fair share obligations. An example: Take a Third Round 100 unit development with a 20 percent set aside. The 80 market units generate an additional growth share of 20. Therefore, the 20 affordable units on site will be used to satisfy the growth share obligation created by the development. The only exception to this is when actual growth is substantially less than projected growth and the additional growth share obligation from new inclusionary development will not trigger an additional growth share obligation because growth share is being governed in that instance by the COAH projections. COAH should permit market units in inclusionary Third Round site developments to be subtracted as it does for market units on Second Round sites. Otherwise, the system COAH has created is fatally flawed. Municipalities needing new units in the municipality will be forced to sponsor all-affordable projects and will thereby be left exposed to the expenditure of substantial municipal funds, particularly when a great deal of approved but un-built development has vested rights and cannot be used to satisfy its own growth share. Requiring such expenditures at taxpayer expense violates the Fair Housing Act prohibition against mandating the expenditure of "municipal revenues in order to provide low and moderate income housing" (N.J.S.A. 52:27D-310(d)) and the constitutional prohibition against unfunded mandates (N.J. Constitution, Article VIII, Section II, Paragraph 5). A response that there are State moneys available for affordable housing is insufficient. The amount available pales in comparison to the need for public funding created by the rules, with no funding left in Balanced Housing at the present time and Low Income Tax Credit financing tightening considerably because of the equity crunch. Of the available funds, much of it is for reducing rents, not for new construction. COAH's response to this comment, which had been previously submitted as part of the comments on the proposed rules published in January 2008, is insufficient. Neither the Smart Growth bonus for affordable units in transit oriented developments nor the presumptive densities address the core problem, that all of the

affordable units in 20 percent inclusionary development simply satisfy the growth share generated by that development and do not help the municipality satisfy the growth share obligation that it otherwise has.

RESPONSE: The presumptive minimum densities and presumptive maximum set-asides referenced in the rule are used for the purpose of establishing realistic opportunities for the construction of affordable housing as part of a municipal petition for substantive certification. These maximum and minimum figures may be altered to achieve higher or lower set-asides and/or higher or lower densities subject to demonstration of financial feasibility and prudent land use. It is not the intent of the regulation to discourage inclusionary developments. The Council appreciates the commenter's suggestions. P.L. 2008, c. 46 includes provisions regarding the economic feasibility of inclusionary developments, including appropriate set-asides, and will be the subject of a future rule amendment.

COMMENT: COAH should not retroactively impose a growth share obligation on municipalities that approved projects before COAH's previous round three regulations became effective on December 20, 2004. Under the proposed growth share methodology, developments approved prior to 2004 and constructed after 2004 are included as part of the growth share obligation, even though the growth share requirements did not exist at the time of the approval. Assessing a growth share on these types of developments unfairly imposes an affordable housing obligation on municipalities for a project approved at a time when it was not clear that the municipality should require affordable housing units or fees from the developer.

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-2.5(b)

COMMENT: The exclusion of hospital relocations will mean that the full affordable housing need is not met. The attached Exhibit B is an internal COAH memo showing that, in 2004, there were over 461,000 jobs in the hospital sector in 2004. If even 50,000 of these jobs were to be relocated (a number that does not seem unrealistic given several currently planned relocations in the state), and the original buildings demolished, between 2004 and 2018, that would represent a loss of over 3,000 affordable housing units. The towns where the hospitals were moving would not incur a growth share, while the towns the hospitals were leaving would be able to subtract the demolitions from their non-residential growth, perhaps obliterating growth share obligations altogether--for example, Princeton might end up with no growth share obligation when its hospital moves to West Windsor. COAH should consider eliminating the exception for hospital relocation. Alternatively, if the provision were retained, COAH should interpret that provision as meaning that towns where hospitals are relocating from cannot subtract demolitions resulting from hospital relocation.

RESPONSE: It is not the Council's intent to allow the municipality to subtract the demolition of the hospital that relocates to another municipality within the region. The purpose of the regulation is to create a level playing field so that both municipalities are not adversely impacted by the relocation of the hospital within the region. Therefore, the municipality where the hospital relocates from would not be permitted to subtract the demolition.

N.J.A.C. 5:97-2.5(b)1

COMMENT: It appears this change is designed to impose a growth share obligation for dormitories, which are temporary housing for students. Such temporary housing should not create a growth share obligation. If COAH is moving away from allowing temporary or transitional housing to serve as a credit, it should not apply a growth share obligation for any such temporary housing, including dormitories. The two positions are fundamentally inconsistent.

RESPONSE: The commenter should note that dormitories were always subject to growth share. The change here is that dormitories are treated as non-residential development for purposes of determining growth share. This change is consistent with the treatment of hotels and motels which are coded residential, but which COAH treats as non-residential development for purposes of determining growth share.

N.J.A.C. 5:97-2.5(b)1i

COMMENT: The Court indicated the following with respect to the calculation of job growth: "But if municipalities are willing and apparently able to provide the necessary data, then COAH will have a more accurate calculation of real growth. Municipalities must submit annual monitoring reports containing very detailed information reflecting housing growth and job growth. Actual job growth can be included in those reports." It remains unclear why COAH has rejected the Court's suggestion that the obligation be based on an accurate accounting of actual job growth but instead continued to rely solely on the use group [page=5992] methodology that: (a) was severely criticized by the Court; (b) vastly overestimates the amount of job growth; (c) inadequately address the breadth of land uses?

RESPONSE: The Council believes that by using the updated N.J.A.C. 5:97 Appendix D, the Council is complying with the Appellate Division decision, by addressing the Court's concerns that Appendix D had the potential to be arbitrary. The Council hired consultants to conduct a survey to investigate whether Appendix D was accurate and updated Appendix D accordingly. The consultants also conducted a national literature review and factored these findings into the Appendix D results. In compliance with the court's directive, COAH and its consultants explored the possible alternatives for projecting future job growth. While NJDLWD data is available for current jobs, COAH has determined that there is no accurate method for linking future job growth to non-residential land use patterns other than the use of applying the Appendix D method of using projected construction/use to jobs created. This is supported by the consultants and their findings. However, municipalities may submit actual jobs through documentation used to obtain financing--that is, business plan or like documentation, in order to capture disparities between COAH's published ratio and the actual jobs in storage uses. This can be submitted at petition in the form of a certification from the developer or business owner if one exist, if the municipality is requesting a growth projection adjustment or anticipates higher a projection. Otherwise, a municipality may submit actual data at the biennial reviews if growth has occurred from warehousing and the disparity between the growth ratio and actual jobs is such that the municipality wants to challenge use of the ratios with actual jobs data.

N.J.A.C. 5:97-2.5(b)1iv

COMMENT: NJ-NAIOP commends COAH for reintroducing the concept that demolitions of non-residential structures reduce a municipality's actual non-residential growth share obligation. However, NJ-NAIOP and other commenters urge COAH to remove the requirement that the structure must have been occupied for at least one year prior to its demolition in order for the municipality to receive the reduction. Few, if any, non-residential structures are occupied for the year prior to their demolition, and COAH has no evidence in the record supporting such a short time period. Generally, a non-residential structure is vacant for many years before it is demolished and then redeveloped particularly those properties located on brownfields and urban infill sites and proposed to be redeveloped through adaptive re-use. In proposing a relevant time period, COAH should remain consistent with its non-residential growth share methodology, which focuses on job growth since January 1, 2004. Under the regulations and amendments, if a structure, which was occupied on January 1, 2004, becomes vacant, is demolished more than a year after becoming vacant, and is replaced with a similarly sized structure in the same use group, this demolition and replacement generate no net job growth within the municipality in comparison to the number of jobs existing as of January 1, 2004. However, under the amendments, the municipality will incur an actual non-residential growth share obligation. The commenters believe that this inconsistency should be corrected and the recommendations from the commenters range from eliminating the one year requirement, extending it to three years, amending it to include the demolition of any non-residential structure, which was occupied as of January 1, 2004, to modifying it to prescribe the date as "being occupied as of the effective date of the 2000 Census."

RESPONSE: The intent of N.J.A.C. 5:97-2.5(b)2iv is to allow municipalities to subtract "recent" jobs lost based on demolitions. In order to subtract the jobs from the growth share obligation, COAH feels that the requirement that structures be occupied at least one year prior to demolition is reasonable. If a municipality can demonstrate that a more accurate measure of job loss within the period of time being measured (2004-2018), the Council will take it under consideration on a case by case basis.

N.J.A.C. 5:97-2.5(b)2

COMMENT: COAH should increase the one-year time limitation for subtraction of demolitions to two years. Demolishing a building and reconstructing a new building for occupancy within one-year is not reasonable under normal business conditions taking into consideration the cumulative time required for obtaining development approvals, construction permits and a certificate of occupancy.

RESPONSE: The commenter should note that N.J.A.C. 5:97-2.5(b)2iv states that the structure must have been occupied at least one year prior to the demolition. It does not indicate that the new building must be constructed or occupied within one year of the demolition.

N.J.A.C. 5:97-2.5(b)2iv

COMMENT: The commenter supports the proposed amendment that would allow the subtraction of jobs lost based on demolitions permits issued in the calculation of actual growth share. This amendment recognizes appropriately that redevelopment takes place in New Jersey in part through demolition of existing non-residential structures. While some jobs, that is, non-residential floor area, may be lost, new non-residential floor area and housing units will be created, generating a Growth Share obligation to the municipality.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: Jobs lost based on demolition of non-residential structures is an appropriate deduction. However, the Council should also deduct demolitions of residential units occupied at least one year prior to demolition on the same basis. Since the projected need is based on net growth, municipalities should not be assessed a growth share obligation based upon demolitions and reconstruction of existing occupied housing since there is no net growth.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: With regard to our comments on the proposed regulations pertaining to residential development, we note another discrepancy between COAH's regulations and P.L. 2008, c. 46. Currently, COAH's proposed regulations impose an affordable housing obligation on a municipality for new employment generated by the construction of a new university office and also for new university housing construction (which houses the faculty member who works in the office). This situation effectively double counts the impact of job growth. This problem can be resolved by exempting the non-residential project from the growth share formula (consistent with the exemption of the education use from the 2.5 percent non-residential development fee in P.L. 2008, c. 46).

RESPONSE: P.L. 2008, c. 46 will be the subject of a future rule amendment.

COMMENT: Tinton Falls respectfully suggests that the demolition regulation, N.J.A.C. 5:97-2.5(b)2iv, be either modified to specifically recognize that it does not apply to Fort Monmouth towns such as Tinton Falls, or that it be construed liberally so as not to impute a non-residential growth share obligation arising from the demolition of existing non-residential structures. The Borough asserts this position is sound from both a legal and policy perspective. COAH's proposed amendments to its new third round regulations already recognize the uniqueness of Fort Monmouth since these amendments permit the Fort Monmouth towns to address their respective affordable housing obligation through partnerships on a regional basis. See N.J.A.C. 5:97-3.16(d) and 6.13. However, these regulations do not go far enough. All of the Fort Monmouth towns will be facing the same dilemma that Tinton Falls is facing--substantial growth share obligation arising out of the proposed non-residential development--so that addressing the non-residential growth share obligation on a regional basis does not solve the problem. Rather, what solves the problem is recognizing that regardless of the demolition date of non-residential structures within Fort Monmouth, Tinton Falls receives a credit for the jobs lost. This result also makes sense from a policy standpoint. Tinton Falls has no control over the Federal government's closure process and the timing of the subsequent redevelopment of the site. Since either the Federal government or

FMERPA will largely control the redevelopment of the site, it is fundamentally unfair to impose a non-residential growth share obligation from the demolition and replacement of current non-residential structures upon Tinton Falls. This analysis applies to jobs lost both on Fort Monmouth property and civilian off-base non-residential structures located in Tinton Falls. Otherwise, the Fort Monmouth redevelopment will have a devastating effect on the Borough's taxpayers.

RESPONSE: The Council will enter into a Memorandum of Understanding with FMERPA in the near future to address the [page=5993] commenter's concerns as well as the requirements of recently signed P.L. 2008, c. 46 and its impacts on the closure of Fort Monmouth. P.L. 2008, c. 46 will also be the subject of a future rule amendment.

COMMENT: COAH has changed the regulation regarding the subtraction of non-residential demolition. Previously, jobs lost were subtracted if the structure was occupied as of the date of the petition. Now, COAH is requiring a demolition permit and occupancy one year prior to demolition. Princeton Borough has a hospital that is moving to another location and, as a result, there will be a substantial job loss because of the relocation. It can not be determined at this time what demolition may be involved because the existing structure will be converted into 280 residential units. Those 280 new residential units will create a growth share obligation. As per this rule amendment, Princeton will have a residential growth share obligation from the new use without a corresponding non-residential growth share reduction because of the lost jobs. This is unfair. COAH's initial and adopted rule was correct--COAH should revert to its adopted rule, subtract jobs lost and delete the amendment. A demolition permit should not be a requirement.

RESPONSE: Since a municipality's actual growth share obligation is based upon the square footage of non-residential development as measured through certificates of occupancy, COAH believes that the proper mechanism for measuring the loss of non-residential square footage is the demolition permit. Therefore, the Council requires demolition permits to accurately measure jobs lost based on the loss of non-residential square footage of previously occupied buildings.

N.J.A.C. 5:97-2.5(b)2v

COMMENT: The commenter is especially grateful for the attempt by COAH to address the concerns initially put forth with regard to the need to exclude nursing facility construction from growth share calculations. However, the commenter remains concerned that the amendments proposed at N.J.A.C. 5:97-2.5(b)2v still present impediments to the expansion or construction of nursing facilities, not necessarily undertaken to increase capacity, that will be needed in the future to provide suitable accommodation for elderly residents who have no other option for their care but a nursing facility. Moreover, the commenter believes that even as proposed, N.J.A.C. 5:97-2.5(b)2v undermines the intent of recently enacted legislation, Assembly Bill 500, to facilitate the relocation of, or on site improvement to, nursing facilities by exempting such construction from a newly established state-wide non-residential development fee. This provision should be revised so that jobs resulting from construction for health care uses by nursing homes will be exempted from a municipalities' growth share obligation.

RESPONSE: The purpose of the regulation is to create a level playing field so that both municipalities are not adversely impacted by the relocation of the hospital or nursing home within the region. It is only granted for relocation within the region, otherwise it would be a dilution of regional need. The regulation allows for the equivalent number of jobs, as measured by use group in N.J.A.C. 5:97 Appendix D, associated with the relocation of a hospital and/or nursing home from another municipality within the same housing region based on square footage, to be subtracted from total jobs to acknowledge the jobs that existed prior to the relocation. The Council will propose amendments to implement P.L. 2008, c. 46 in the near future.

COMMENT: The relocation exemption for nursing home facilities within the same COAH region should be expanded to include relocation to an immediately adjacent COAH region. By exempting relocations only within the same COAH region, the Council is viewing the opportunities presented by and opportunities for relocation too

narrowly. Why is a COAH regional boundary more significant than a municipal boundary? It is arbitrary to impose a growth share obligation on a facility that moves from one municipality to another three miles away but in a different COAH region.

RESPONSE: Hospitals and nursing homes that relocate within the same COAH region, as opposed to hospitals and nursing homes that share a municipal boundary, are exempt from a growth share obligation, as COAH's methodology is based on the six COAH regions. For this purpose, COAH has already stated that, where the relocated hospital facility is not within the same COAH region, but is within close proximity of the existing facility, e.g. in an adjacent municipality, the Council may entertain waivers to this requirement.

COMMENT: The special exemption given jobs resulting from hospitals and nursing homes relocating within the same housing region appears to be discriminatory and not rational. If the basis for this exemption is due to the beneficial aspects of these institutional uses, why then does it not apply to all beneficial institutional uses, and why is it only granted for relocation instead of new construction or additions to existing hospitals and nursing homes?

RESPONSE: The purpose of the regulation is to create a level playing field so that both municipalities are not adversely impacted by the relocation of the hospital within the region. It is only granted for relocation within the region. The regulation allows for the equivalent number of jobs, as measured by use group in N.J.A.C. 5:97 Appendix D, associated with the relocation of a hospital and/or nursing home from another municipality within the same housing region based on square footage, to be subtracted from total jobs to acknowledge the jobs that existed prior to the relocation. To the degree that additions to existing hospitals and nursing homes provide new jobs, a growth share obligation would accrue.

COMMENT: The inclusion at N.J.A.C. 5:97-2.5(b)2v of a municipality's growth share calculation as it relates to the expansion and/or addition of a health care facility will have an impact on policies that are central to access to health care in this State and unique to the State's health care resources. The proposed rules at N.J.A.C. 5:97-2.5(b)2v discuss additional jobs resulting from an expansion and/or addition of the relocated hospital and/or nursing home in accordance with the use group in N.J.A.C. 5:97 Appendix D. Use Group "I" is described as institutional uses such as assisted living facilities, hospitals, nursing homes, jails and day care facilities. The narrative to Appendix D states "[f]or every 16 new jobs created in a municipality, as measured by new or expanded nonresidential construction, the municipality shall have the obligation to provide one affordable residential unit. New jobs created shall be based on the gross square footage of nonresidential development and on the use group of the facility being constructed." The footnote ** does exclude replacement square footage of hospitals and nursing homes (I-2) within the same COAH Region; however, it does not offer a general exclusion of the described facilities similar to Use Group E described as "Schools K-12" and Use Group U described as "Miscellaneous uses." Through its regulatory process, the State Department of Health and Senior Services works closely with community and the regulated community to maintain access to essential health care service. To that end, replacement facilities are approved not as expansion or new growth but to replace aging facilities and provide access to appropriate services. The Department's regulatory process requires a certificate of need application, review and approval for replacement facilities. To include these institutions as part of a municipalities' growth share would have a significant impact on health care facilities, the communities they serve, and ultimately Statewide access to health care services. The Department respectfully requests that hospitals and nursing homes be excluded from Appendix D calculation of square feet generating one affordable unit and jobs per 1,000 square feet.

RESPONSE: The Council appreciates the commenter's suggestions and concurs that when replacement facilities do not result in new jobs, a growth share obligation should not ensue. As a result, the square footage of hospitals and nursing home facilities are excluded from growth share in COAH's rules, as those jobs represent growth a relocation of existing employment. A hospital or nursing home facility expansion beyond the existing square footage does represent new growth and as such creates jobs and an associated demand for housing. Furthermore, the New Jersey Department of Labor and Workforce Development's Division of Labor Market and Demographic Research data shows that hospitals and nursing homes are projected to be in the top seven of industries with the greatest employment growth between 2004 and 2014. Notwithstanding, municipalities experiencing growth through hospital expansions and/or relocating hospital

facilities within close proximity of the existing facility but not within the same COAH region, for example, in an adjacent municipality, may submit actual jobs data through waivers to COAH's regulations pursuant to the waiver criteria enumerated in N.J.A.C. 5:96-15. For example, if a municipality seeks to submit actual jobs, they may [page=5994] submit documentation used to obtain financing for operations, i.e. certificate of need, business plan, or like documentation, for all occurring non-residential development where there is a 10 percent difference between the actual jobs and the number of jobs determined through the Appendix D jobs to square footage ratio. This can be submitted in the form of a certification from the developer(s) or business owner(s) if one exists. The municipality may submit this data at petition if they are submitting actual jobs to date. Otherwise, the municipality may submit actual data for all occurring non-residential development at annual monitoring if there is a 10 percent difference in the number of jobs determined through the Appendix D jobs to square footage ratio and the actual growth that occurs from non-residential development.

N.J.A.C. 5:97-2.5(e)

COMMENT: This rule would require that a municipality must provide for the number of affordable units projected by COAH and provided in N.J.A.C. 5:97 Appendix D even if the actual amount of residential and non-residential development occurring in the town results in a lower obligation than projected by COAH. This would seem particularly unfair and contrary to the growth share approach if the actual amount of residential and non-residential development was less than projected as a result of market conditions outside of the municipality's control and not as a result of municipal actions (for example, zoning amendments intended to lower the obligation).

RESPONSE: The Council will consider waivers to its regulations pursuant to the waiver criteria enumerated in N.J.A.C. 5:96-15. For example, if a municipality seeks to submit actual jobs, they may submit documentation used to obtain financing for operations, that is, business plan or like documentation, for all occurring non-residential development where there is a significant disparity, that is, by 10 percent from the number of jobs determined through the Appendix D jobs to square footage ratio. This can be submitted in the form of a certification from the developer or business owner if one exists. The municipality may submit this data at petition if they are submitting actual jobs to date. Otherwise, the municipality may submit actual data for all occurring non-residential development at annual monitoring if the actual growth that occurs from non-residential development varies significantly, that is, by 10 percent from the number of jobs determined through the Appendix D jobs to square footage ratio. COAH would then monitor actual jobs created over time as part of its biennial review. The projection of growth share is to be used as a planning tool to establish reasonable targets. Municipalities will be required to zone or provide other mechanisms pursuant to N.J.A.C. 5:97-6 in keeping with their projections. The actual obligation will be determined based upon what actually occurs and adjustments will be made during biennial plan reviews.

N.J.A.C. 5:97-3

COMMENT: In the past, COAH has limited credit for housing units constructed after April 1, 1980. The logic of this standard is that the initial housing obligations were based on the 1980 Census. In its responses to the public's comments, COAH has opened the door for municipalities to receive credit for affordable housing constructed prior to 1980. At 40 N.J.R. 2768, COAH has encouraged municipalities to seek a waiver from the rule. COAH must not grant credit for housing that was constructed prior to 1980. The housing does not address the housing need and such a crediting policy would certainly dilute the affordable housing obligation.

RESPONSE: The comment is outside the scope of this rule proposal. The Response cited by the commenter states that "a municipality may seek a waiver to permit crediting of units that would otherwise be lost to the affordable housing stock." It further notes that waivers are reviewed on a case-by-case basis by the Council. The Response is an acknowledgement of the longstanding waiver provisions in COAH's rules and is not intended to "encourage" waiver requests.

COMMENT: COAH's credibility is undermined by the fact that it approved no third round RCA agreements

between municipalities while bills were going through the legislature that eliminated RCAs in the future but would have allowed existing third round RCA agreements if they had been approved by COAH. The net impact of COAH not approving any RCA agreements is that there are now many municipalities who have executed RCA agreements that are now invalid because of COAH's inability or unwillingness to approve these agreements.

RESPONSE: The January 25, 2007 decision of the Appellate Division prohibited COAH from reviewing or granting substantive certification to third round plans until COAH adopted revised third round rules consistent with the court's decision. As a result, COAH could not approve any third round RCAs after January 25, 2007. COAH revised its third round rules and these new rules were adopted by COAH on May 6, 2008 and became effective on June 2, 2008. Thereafter, the Legislature enacted amendments to the Fair Housing Act that prohibited COAH from approving RCAs as of July 17, 2008. COAH's review and approval of RCAs has always been based upon the merits of the proposed RCA. However, with the amendments to the Fair Housing Act, COAH's statutory authority to approve RCAs has been eliminated.

COMMENT: The commenter objects to the retroactive elimination of previously certified and granted substantial compliance bonuses. The agency must fully honor prior round bonuses, particularly since compliant municipalities, acting in good faith, implemented fair share plans with these bonuses.

RESPONSE: The Council has eliminated reductions for substantial compliance only from the third round rules. Reductions for substantial compliance were a component of N.J.A.C. 5:93 and, as such, are outside the scope of the current rule proposal. The Council will honor substantial compliance bonuses that were previously granted as part of a municipality's substantive certification.

N.J.A.C. 5:97-3.2

COMMENT: The requirement to demonstrate the economic viability of mechanisms in the implementation schedule is a positive addition.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-3.2(a)

COMMENT: COAH's rule allows a municipality to avoid zoning land for affordable housing by submitting a plan saying that it will build a 100 percent affordable housing development or develop a redevelopment plan. By not zoning land, the community can avoid growth. Then, when the growth does not occur, it can avoid building the affordable housing that it delayed building at the time of substantive certification. This rule is clearly contrary to the Appellate Court's admonition that a municipal decision not to grow cannot result in a reduced housing obligation.

RESPONSE: The Council does not intend to allow municipalities to escape their housing obligations through the use of an implementation schedule. The Council will conduct biennial plan evaluations upon substantive certification of a municipality's Housing Element and Fair Share Plan. The purpose of the evaluations is to verify that the construction or provision of affordable housing has been in proportion to the actual residential and employment growth in the municipality or in accordance with the implementation schedule required under N.J.A.C. 5:97-3.2(a)4, and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing and that municipalities are implementing the terms of their substantive certification. Failure to meet the compliance and procedural requirements of N.J.A.C. 5:96-10.4 may ultimately result in the revocation of substantive certification.

COMMENT: COAH should release its proposed form of a fair share plan as soon as possible. COAH has proposed a very short turnaround for towns to prepare and adopt a new or revised third round plan.

RESPONSE: The application is available for use and may be found on COAH's website at www.nj.gov/dca/coah.

N.J.A.C. 5:97-3.2(a)4

COMMENT: The length of COAH's review makes it more likely that a municipality will not grow as much as COAH has projected. A 2001 study of COAH's process demonstrated that the average length of COAH's administrative process with no objectors was 23 months. The average length of COAH's administrative process with objectors was 49 months. Several communities have been in COAH's administrative process for over 13 years without receiving substantive certification. Municipalities will be submitting housing elements at the end of 2008. Typically, municipalities do not put inclusionary zoning in place until after substantive certification has been granted. If the substantive [page=5995] certification process requires four years, the inclusionary zoning that will stimulate growth may not be put in place until 2013. This scenario would leave only five additional years for a municipality to achieve the growth projections that COAH has used to allocate need. COAH's task is to allocate all of the State and regional need for low and moderate income housing and require municipalities to create a realistic opportunity for all of it. COAH's projections are just a different means of allocating the housing obligation. The fact that they, like most projections, may prove to be incorrect, over a 10-year period, cannot be used to allow a municipality to escape from its housing obligation.

RESPONSE: The Council does not intend to allow municipalities to escape their housing obligations through the use of an implementation schedule. Comments regarding the length of COAH's review process are outside the scope of the rule proposal.

COMMENT: The meaning of the term "realistic opportunity" and how it should be interpreted and applied by both municipalities and COAH must be clarified. This concept must be applied uniformly, objectively and fairly. The commenter is concerned that the whole concept of "realistic opportunity" is to some extent in the eye of the beholder, that is, the Council, which could somewhat arbitrarily declare some aspect of a plan "not a realistic opportunity." More concretely, some aspect of a plan could depend on some form of State aid, such as low-interest loans, which might later be withdrawn and render a part of the plan "unrealistic," through no fault of the municipality. Later (N.J.A.C. 5:97-6.7(d)6ii) it is indicated that municipal bonding may be required if State aid is not approved. Also, the requirement for "realistic opportunity" undercuts the concept of planning to meet the obligation by inclusionary zoning, since any site could be deemed "not a realistic opportunity" if the present owner does not wish to plan for an inclusionary development at this time.

RESPONSE: The Council agrees with the commenter that the term "realistic opportunity" must be applied uniformly, objectively and fairly. The concept of "realistic opportunity" stems from the Fair Housing Act and is fundamental to the *Mount Laurel* doctrine. Under the Council's rules, the term is defined as "a reasonable likelihood that the affordable housing in a municipality's Housing Element and Fair Share Plan will actually be constructed or provided during the 10-year period of certification based upon a careful analysis of the elements in the municipality's plan, including the financial feasibility of each proposed mechanism and the suitability of specific sites as set forth in N.J.A.C. 5:97-3.13." The Council's rules include not only specific criteria for site suitability, but also outline specific requirements regarding the submission of documentation deemed necessary by the Council to demonstrate that a proposed affordable housing mechanism presents a realistic opportunity. With regard to inclusionary zoning, there is no requirement to demonstrate the intent of the present owner. Rather, the Council evaluates the suitability of zoned sites and requires that the zoning provisions include financial incentives in the form of increased densities and reduced costs to the developer, thereby creating a reasonable likelihood that affordable housing will be constructed.

COMMENT: While the Council presents its requirements as flexible and based on what growth actually occurs, it expects a complete plan ("detailed timetable") for the next 10 years and at many points disallows ways of carrying out its objectives that may not have been approved, firmly planned or intended by the property owner in 2008. To what extent may we later substitute additional affordable units not specified in the plan for units specified but not built? Or are these only applicable to additional obligations required by subsequent reviews?

RESPONSE: The Council cannot respond to the commenter's observation because the commenter does not specifically note how the Council "disallows ways of carrying out its objectives." Further, the comment is outside the scope of the current rule proposal.

N.J.A.C. 5:97-3.2(a)4iii

COMMENT: Please explain what is meant by "documentation for the extension of expiring controls." The provision appears to be unnecessarily cumbersome, and designed to make it difficult for this compliance mechanism to be implemented. Controls expire at random times, and if a municipality has funds, it may choose to implement compliance in such a limited fashion. The system would be better served by allowing municipalities to rely upon such a compliance mechanism, and then to monitor the actual performance rather then requiring extensive documentation up front which may not prove accurate.

RESPONSE: The documentation required for the extension of expiring controls at the time of petition is detailed at N.J.A.C. 5:97-6.14(b). This provision is not intended to be cumbersome or to make the extension of expiring controls a difficult compliance mechanism; rather, COAH has determined that some minimal documentation is necessary to ensure that the property referenced actually meets the criteria for extension of expiring controls and provides a realistic opportunity. For example, the municipality must be able to demonstrate that the owner has agreed in writing to extend controls, that the restricted units meet the criteria for prior-cycle or post-1986 credits, and that the affordable units' controls expire during the third round. As noted under N.J.A.C. 5:97-6.14(c), more detailed documentation, including pro-formas and an identification of funding sources, is not due until the grant of substantive certification or in accordance with the municipality's implementation schedule.

N.J.A.C. 5:97-3.2(a)4iv

COMMENT: Explain in detail what is meant by the new language requiring the municipality to comply with the "plan evaluation requirements," and be subject to enforcement.

RESPONSE: As specifically stated in this subparagraph, the "plan evaluation requirements" are those referenced in N.J.A.C. 5:97-2.5(d), that is, the comparison of actual growth share and actual affordable housing production within a municipality. This comparative information must be submitted to the Council at such time and in such form as the Council requires. For purposes of enforcing remedies outlined under N.J.A.C. 5:96-10.4, the Council will consider the submitted information during its biennial plan evaluation review (pursuant to N.J.A.C. 5:96-10).

COMMENT: The rule says "but no later than two years prior to scheduled implementation of the mechanism." This sounds as if when a municipality firms up an implementation schedule, that is, gets a developer to commit to implementation, it will have to hold off development for two years so that this requirement is met. This seems counterproductive.

RESPONSE: The commenter is referring to a provision that requires documentation for a proposed mechanism to be submitted no later than two years prior to the scheduled implementation of the mechanism. This provision applies only to mechanisms being phased over the third round period. If a mechanism is scheduled to be implemented in June of 2015, for example, the implementation schedule should indicate that the documentation for the mechanism will be submitted by June of 2013. If circumstances are such that the mechanism can be implemented sooner than the scheduled date, then the municipality should submit the documentation as soon as possible prior to June of 2013 or project completion, whichever is earlier. The implementation schedule does not apply to zoning.

N.J.A.C. 5:97-3.2(a)5

COMMENT: Please explain in full and complete detail the reasons for the proposed changes to this section.

RESPONSE: This provision pertains only to municipalities seeking a vacant land adjustment or a household and employment growth projection adjustment. The Council believes that such municipalities should be required to submit all information and documentation at the time of petition because, otherwise, there would be no "realistic opportunity" demonstrated due to the lack of vacant land. However, the amended language permits two exceptions to this rule. A municipality may phase a proposed affordable housing mechanism when: 1) the mechanism does not rely on the availability of vacant land (such as redevelopment) or 2) the municipality takes appropriate measures to reserve scarce resources if the mechanism does rely on vacant land. In both cases, the documentation may be submitted in accordance with an implementation schedule, provided the economic viability of the mechanism is reliant on the phasing. In addition, the municipality must take into account the actual growth share obligation in accordance with N.J.A.C. 5:97-3.2(a)4i.

[page=5996] **N.J.A.C. 5:97-3.4**

COMMENT: This amendment requires that 50 percent of the rental housing requirement for projected growth share be family units. If actual growth share exceeds projected growth share, 50 percent of the rental housing requirement for actual growth share should also be family units.

RESPONSE: The projected growth share is used as the basis for preparing a municipality's plan to address its affordable housing obligation and also for calculating the family rental requirement pursuant to this section. Because a municipality's actual growth share could potentially vary on a monthly if not daily basis, it would not be practical or realistic to expect a municipality to adjust its rental housing plan accordingly. Consequently, the Council believes that it is reasonable, for planning purposes, to base the family rental requirement on projected growth share.

COMMENT: Extension of expiring controls should not count towards the rental credit. Every town should have to create new rental opportunities to meet the prospective need.

RESPONSE: The Council disagrees with the commenter. Through the extension of expiring controls, a municipality maintains as affordable, units which might otherwise be lost. The Council believes that this program provides a legitimate means of fulfilling a municipality's affordable housing obligation, including the municipal rental obligation.

COMMENT: Any attempt to address the needs of very low income households should recognize that homeownership is not a realistic solution to the needs of very low income households. It is not practical to think that these households can qualify for a mortgage or afford the maintenance associated with homeownership. COAH must recognize that the response to this housing need is more rental housing and greater public subsidy. In order to address this housing obligation, COAH should increase the municipal rental obligation to 30 percent and should provide greater subsidies to private developers that agree to construct rental housing.

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-3.4(d)

COMMENT: The rule says "in accordance with a detailed schedule." Again, this requires a detailed plan now for the next 10 years, which may not be fulfillable depending on conditions. Developers may not be available who will commit to such plans.

RESPONSE: The purpose of the implementation schedule is to demonstrate "realistic opportunity" as defined under N.J.A.C. 5:97-1.4, that is, a reasonable likelihood that the affordable housing in a municipality's Housing Element and Fair Share Plan will actually be constructed or provided during the 10-year period of certification. The schedule is a plan for municipal action and should include a detailed timetable identifying specific steps to be taken to implement the mechanisms included in the Fair Share Plan. These steps might include the issuance of a Request for Proposals (RFP)

for a municipally-sponsored housing development and/or the selection of a nonprofit affordable housing provider. The Council will closely monitor the implementation schedule to ensure that the Fair Share Plan continues to present a realistic opportunity.

COMMENT: Please explain the necessity for the change requiring an implementation schedule and detailed timetables. With all of these requirements for implementation schedules and detailed timetables, COAH should assess the necessity of imposing what would appear to be needless obligations upon municipalities. All of these matters should be subject to progress monitoring, on a case by case basis, pursuant to the monitoring provisions of the rule rather than artificial deadlines and requirements.

RESPONSE: The commenter has misinterpreted this provision, which has been revised to provide more flexibility to a municipality in meeting its affordable rental obligation. Because a municipality's actual growth share could potentially vary on a monthly if not daily basis, it may not always be practical or realistic to expect a municipality to provide rental units in proportion to its actual growth share obligation. Therefore, the rules now include the option of providing rental units in accordance with an implementation schedule submitted at the time of petition. This schedule must include a detailed timetable so as to demonstrate "realistic opportunity" as defined under N.J.A.C. 5:97-1.4, that is, a reasonable likelihood that the affordable housing in a municipality's Housing Element and Fair Share Plan will actually be constructed or provided during the 10-year period of certification. The Council will closely monitor the implementation schedule to ensure that the Fair Share Plan continues to present a realistic opportunity.

N.J.A.C. 5:97-3.4(e)

COMMENT: Rental units in excess of the prior round rental obligation should be eligible to satisfy the third round rental obligation. By adding the qualifications of the requirements of N.J.A.C. 5:97-4.1(a), and requiring affordability controls through 2018, the Council appears to be attempting to deny excess rental units as credits. COAH must consider that, originally, rental units were restricted for 15 years, not 30 years.

RESPONSE: Rental units in excess of the prior round rental obligation are eligible to satisfy the third round rental obligation provided two conditions are met: 1) all credits and corresponding bonuses have first been applied toward the prior round obligation and 2) the excess rental units have affordability controls that extend through the third round period. These requirements are intended to ensure that only units that remain affordable through the third round period are eligible for third round credit and also that municipalities do not receive credits and bonuses toward the third round obligation for built units that were intended to address the prior round before the prior round has been fully addressed.

N.J.A.C. 5:97-3.5

COMMENT: N.J.A.C. 5:93-5.15(d), governing the 1987-1999 rental bonus, is clear that the rental bonus is to be granted when the rental units are constructed. The rule provides COAH with the option of granting the rental bonus in advance when the municipality has provided a firm commitment for the construction of the rental units. The rule provides that a rental bonus granted in advance of construction may be lost if the municipality has not constructed the rental units within the time periods established as a condition of substantive certification. Clearly, if a municipality has not constructed its 1987-1999 rental obligation by 2008, it has not gone beyond creating a realistic opportunity. A municipality should not receive the benefit of a rental bonus if it has not complied with COAH's timetable for constructing rental housing. Similarly, the municipality should not receive a rental bonus if it has obstructed private sector efforts to produce rentals.

RESPONSE: The Council believes that rental bonuses should be granted for un-built rental units addressing the prior round rental obligation, provided there is evidence of a firm commitment for the construction of the units as required under proposed N.J.A.C. 5:97-3.5(c). If, at the time of plan evaluation review (pursuant to N.J.A.C. 5:96-10), the Council determines that the rental units have not been constructed within the time period established by that commitment, the municipality may lose the rental bonuses.

N.J.A.C. 5:97-3.5(c)

COMMENT: Define what is meant by the term "firm commitment" for the construction of units.

RESPONSE: As used in the subsection referenced by the commenter, "firm commitment" means a preliminary or final approval granted by the municipality for the construction of the proposed affordable units, or a binding agreement, such as a developer or redeveloper's agreement, which is deemed by the Council to ensure the construction of the proposed affordable units within a specified period of time.

N.J.A.C. 5:97-3.6(a)3ii

COMMENT: The commenter is glad to see that municipalities will not be penalized if a developer abandons a development. Presumably the development would still be considered a "realistic opportunity," since another developer might take it over. However, the loss of bonus "if the preliminary or final approval is no longer valid" has much the same effect. Municipalities are limited by the Municipal Land Use Law as to how far they can extend an approval if construction has not started (although the Permit Extension Act will stretch this out).

RESPONSE: The Council appreciates the commenter's support. The commenter's observation regarding the validity of preliminary or final approval is out of the scope of this rule proposal.

[page=5997] **N.J.A.C. 5:97-3.7**

COMMENT: Given the volatility of the current housing and lending markets, it is unreasonable to require municipalities to submit evidence of a firm commitment from developers for the construction of affordable rental housing. If the tenure of the affordable units must change in order for a project to move forward based on economic conditions and market demand, an amendment to the municipality's housing element and fair share plan should be required. The successful construction of affordable for-purchase units should be encouraged rather than having no construction of any type of affordable units at all. In addition, greater flexibility regarding the ratio of rental versus for-purchase affordable housing is recommended.

RESPONSE: The provision cited by the commenter refers to the very low income bonus. The Council believes that bonuses should be granted only to units that have been constructed or will be constructed within a specified time period, as evidenced by a firm commitment. However, because P.L. 2008, c. 46 establishes a very low income housing requirement, provisions relating to the very low income bonus may be the subject of a future rule amendment.

COMMENT: The bonus for very low income units should be repealed as such units are now required by P.L. 2008, c. 46, §7.

RESPONSE: The commenter is correct that P.L. 2008, c. 46 requires the provision of very low income units. P.L. 2008, c. 46 will be the subject of a future rule amendment.

COMMENT: There is not a statutory requirement to provide very low income affordable housing (except as proposed by N.J.A.C. 5:97-6.4(b)6). The incentive to encourage creation of very low income housing was the two units of credit for each very low income rental unit created. The proposed rule states that the bonus credit shall only be provided for very low rental units in excess of 10 percent the total number of affordable units. In other words, the municipality would have to provide over 10 percent of its entire growth share obligation by very low income affordable housing prior to receipt of any bonus. The very low income rental units require the greatest financial subsidy; this requirement will not encourage creation of very low income housing because the financial of creating and operating these units far outweighs the financial gain.

RESPONSE: With the enactment of P.L. 2008, c. 46, there now is a statutory requirement to provide very low

income housing. P.L. 2008, c. 46 will be the subject of a future rule amendment.

COMMENT: The very-low-income bonus should be modified to comply with A500.

RESPONSE: P.L. 2008, c. 46 will be the subject of a future rule amendment.

N.J.A.C. 5:97-3.7(a)

COMMENT: The commenter has long been arguing for amendments to COAH rules that will help house very low income households The requirement in the proposed amendments that rental developments have 10 percent of their units affordable to households at 30 percent of the AMI instead of 35 percent is a positive step in that direction.

RESPONSE: The Council appreciates the commenter's support. The enactment of P.L. 2008, c. 46 will require future rule amendments.

N.J.A.C. 5:97-3.10

COMMENT: The age restricted maximum should be increased to at least one third (33 and 1/3 percent) from the current one quarter (25 percent) given the aging of the population and the fact that so many seniors live on fixed and limited incomes.

RESPONSE: The comment is outside the scope of this rule proposal. The Appellate Division decision reversed the third round rule that permitted a municipality to limit up to 50 percent of its affordable housing obligation as age-restricted housing but found the prior age-restricted cap of 25 percent to be reasonable.

N.J.A.C. 5:97-3.13

COMMENT: COAH should not rely on the SDRP or refer sites for an Office of Smart Growth (OSG) recommendation until COAH has determined that the SDRP has identified adequate areas to accommodate the State's growth, suggested minimum densities that promote development in growth areas and developed policies that promote affordable housing. COAH should be more concerned about the presence of public water and sewer than arbitrary planning area designations.

RESPONSE: The Council does not consider the determination of Planning Areas by OSG and all participating municipalities and counties through the Cross Acceptance process to be arbitrary. The Council has proposed presumptive densities and set-asides as suggested by the commenter and concurs that availability of sewer and water is critical to the provision of affordable housing.

COMMENT: The rules should take a functional and flexible approach to sewer service and capacity and provide that if there is a reasonable ability to provide sewer, the town must justify that sewer cannot be provided. Also, COAH should not relinquish veto power to the DEP (see definition of N.J.A.C. 5:97-14, Sewer capacity, as the rules currently dictate). It is a recipe for failure of this entire set of rules to produce the needed or even a fraction of the needed housing. It should be clear that DEP approval of a management plan under review is not needed to meet this definition. Likewise, COAH's seeking recommendations of OSG is a recipe to frustrate the provision of needed housing.

RESPONSE: Fair Share Plans must demonstrate that existing and planned water and sewer capacity is sufficient to accommodate all proposed mechanisms presented to meet the fair share obligation projected for the municipality. By the time a petition is submitted to COAH, municipalities should be well aware of their own plans for sewer service and their participation in the County Wastewater Management Plan. If wastewater management plans are found to be inconsistent with the implementation of the Fair Share Plan, that is, insufficient capacity, the municipality will be required to reconcile the deficiency in order to obtain substantive certification. A memorandum of understanding between COAH and DEP will clarify the goals of the organizations and set up a framework for resolving conflicting

objectives. Similarly, COAH and OSG will enter a memorandum of understanding to facilitate these efforts.

COMMENT: Definition of "site control." The definition should not be adopted, as it is too restrictive. The definition eliminates the existing reference to enforceable interest. Municipalities have the power of eminent domain, and the limitation in this definition would require property owner consent, or completion of a condemnation process, before a municipality could propose a municipal sponsored construction project. The definition is too limiting.

RESPONSE: The Council believes that the existing definition of site control is effective as it permits the Council to ensure that the site proposed by the municipality will realistically provide affordable housing during the certification period. The commenter should be aware that N.J.A.C. 5:97-6.6(e) permits municipalities to submit documentation regarding site control subsequent to receiving a grant of certification from the Council, in conformance with an implementation schedule as set forth at N.J.A.C. 5:97-3.2(a)4. The rules would not prohibit a municipality from using eminent domain as a means of obtaining site control.

COMMENT: COAH has already established that a municipality must do everything within its control to provide the public sewer necessary to address the affordable housing obligation (35 N.J.R. 5770, Comments 84 and 85). Each municipality must complete a municipal page for the County Wastewater Management Plan during the wastewater management plan amendment process adopted by DEP. COAH must require each municipality to identify sufficient land areas and sufficient capacity to address the municipal affordable housing obligation. A municipality may not seek to reduce sewer service areas in order to reduce the municipal housing obligation. In computing the necessary land area and sewer capacity, a municipality must create sufficient areas and reserve sufficient capacity to address the entire affordable housing obligation through inclusionary development. To the extent that wastewater management plans have been adopted that have insufficient land area or insufficient capacity to address the municipal housing obligation, the municipality has an affirmative obligation to seek plan amendments.

RESPONSE: COAH's rules, policies and processes are consistent with the commenter's points. Municipalities must prepare Housing Elements that demonstrate sufficient land is planned and zoning to meet their fair share obligation. In addition, as part of the Fair Share Plan they must demonstrate that existing and planned water and sewer capacity is [page=5998] sufficient to accommodate all proposed mechanisms presented to meet the obligation, and not confined solely to inclusionary zoning. By the time a petition is submitted to COAH, municipalities should be well aware of their own plans for sewer service and their participation in the County Wastewater Management Plan. If wastewater management plans are found to be inconsistent with the implementation of the Fair Share Plan, that is, insufficient capacity or sewer service area, the municipality will be required to reconcile the deficiency in order to obtain substantive certification. A Memorandum of Understanding between COAH and DEP will facilitate these efforts.

N.J.A.C. 5:97-3.13(a)

COMMENT: What does "available" mean? That it is actually being marketed, or proposed by its owner for inclusionary development? This could be very limiting. On the one hand, the Council has defined vacant land available for development very broadly, by aerial photos from 2002, including land owned by the State of New Jersey for other purposes, and asserts (N.J.A.C. 5:97-5.2(c)6) the right to define many developed areas as redevelopable; on the other hand, it here may define "available" very narrowly.

RESPONSE: Under previous COAH rules, the term "available" was included in the definitions section. That definition has now been incorporated into the rules at N.J.A.C. 5:97-3.13(a)1: The site has a clear title and is free of encumbrances which preclude development of affordable housing.

N.J.A.C. 5:97-3.13(a)3

COMMENT: Referring back to the definition of sewer capacity in N.J.A.C. 5:97-1.4: areawide wastewater management plans are currently in preparation for submission to the DEP, following new DEP requirements for

countywide plans. Should the petition be in agreement with existing plans, or those in preparation? As part of this process, the DEP is attempting to remove as much vacant land as possible from sewer service areas. For us in Somerset County, this may not be too great a constraint, since the county waste water management plan is moving ahead and sewer service areas are likely to be agreed on before the due date of petition; but in other counties, some of which have chosen not to prepare a county-wide waste water management plan, municipalities may find that proposed sites for affordable housing have been unilaterally removed from the sewer service area by the DEP. Which State agency takes precedence?

RESPONSE: The petition must be based on a plan to provide for adequate sewer and water capacity to satisfy the fair share obligation of the community. That plan will have to be accommodated in the existing plan or in any plan proposal or amendment as part of the county-wide processes. All municipalities should work with their county and/or DEP to present a plan that addresses local goals and meets affordable housing requirements. A memorandum of understanding between COAH and DEP will clarify the goals of the organizations and set up a framework for addressing these issues.

N.J.A.C. 5:97-3.13(a)4

COMMENT: This rule requires that a suitable site must comply with Residential Site Improvement Standards (RSIS) standards. In previous comments, NJBA has advised COAH that this rule is not necessary since all residential developments must comply with RSIS. NJBA has also advised COAH that RSIS compliance cannot be determined until the site is designed. At 40 N.J.R. 2718, COAH has clarified that a municipality need not demonstrate RSIS compliance when it petitions for substantive certification. If that is the case, COAH should clarify its reasons for including an RSIS requirement in the rule. Also, since municipalities need not demonstrate RSIS compliance when it petitions for substantive certification, COAH must not require the private sector to prove RSIS compliance when it offers a site for inclusionary development as an objector.

RESPONSE: The rule in setting the criteria for sites requires at N.J.A.C. 5:97-3.13(a)4 that, "The site can be developed consistent with the RSIS . . ." and does not mandate compliance. One reason why the requirement is included is to provide information regarding unusual and costly conditions that may affect the realistic opportunity of the site to provide affordable housing as per the particular plan. Consistency with the RSIS can be evaluated based on a brief narrative report from a professional engineer stating his or her opinion on the matter, no matter how the site is presented to COAH.

N.J.A.C. 5:97-3.13(b)

COMMENT: The rule says "Be consistent with the State Development and Redevelopment Plan." Similarly, a new Plan is being written, after years of cross-acceptance activity. It will not be completed by June 2, but will be before any litigation of these rules is complete. To which State Plan (and its maps of Planning Areas) should sites be consistent?

RESPONSE: The sites should be consistent with the currently adopted State Plan Policy Map (SPPM). This map is updated periodically to reflect additional plan endorsement petitions that have been approved by the State Planning Commission. The most recent SPPM has been amended through May 20, 2008. Attention should be drawn to any inconsistencies that are due to land use changes emanating from the local housing planning efforts to prepare the Third Round Plan or to unresolved issues with OSG. COAH will review all sites in relation to the current Plan Map and the Cross Acceptance Negotiation Worksheets if applicable and COAH will seek OSG comments as needed.

N.J.A.C. 5:97-3.13(b)2

COMMENT: Judge Serpentelli considered the notion that developers developing in a Limited Growth Area, the functional equivalent of a Planning Area 4 and 5 area, should have the burden of proving that their site is suitable for purposes of securing entitlement to a builder's remedy. *Orgo Farms and Greenhouses v. Tp. of Colts Neck*, 204 *N.J.*

Super. 585, 611 (Law Div. 1985). Therefore, we applaud COAH for requiring that the proponent of using a Planning Area 4 or 5 site on which to create affordable housing "demonstrate" that the site is suitable and "consistent with the goals, policies and objectives of the State Development and Redevelopment Plan."

RESPONSE: The Council appreciates the commenter's support.

COMMENT: It should be COAH's policy to only allow the use of sites in Planning Areas 4, 4B, and 5 as a last resort when a municipality cannot possibly meet its obligation by using land in areas where growth is encouraged. Only then should COAH require that a municipality seek a center designation from the Office of Smart Growth. Even then, such a designation must be a logical location for a center. COAH must encourage municipalities to create a realistic opportunity for affordable housing in accordance with sound planning in accordance with COAH's own mission.

RESPONSE: The Council agrees in general with the commenter's proposal. Providing for affordable housing in areas already planned for growth and which adequately provide for growth, should be the first priority. If it is absolutely necessary to consider Planning Areas, 4, 4B and 5 sites, it should only happen in conjunction with sound planning and coordination with OSG's standards for center designation.

COMMENT: COAH has always honored Planning Area 5 designations. It should continue to do so. Sprawl is defined as "Uncontrolled growth, usually of a low-density nature, in previously rural areas and some distance from existing development and infrastructure." "The New Illustrated Book of Development Definitions," written by Harvey S. Moskowitz and Carl G. Lindbloom and published in 1993 by Rutgers. COAH should always seek to discourage sprawl-particularly when a municipality can achieve constitutional compliance consistent with the state plan.

RESPONSE: The Council thanks the commenter for his suggestion and agrees with the goal presented. Municipalities are encouraged and expected to use sound planning principals to address their obligations and to prepare plans which will provide for well planned growth in accordance with the goals and objectives of the SDRP in all areas of the State. This includes supporting center-based development.

N.J.A.C. 5:97-3.13(b)3

COMMENT: The Highlands Regional Master Plan and its land use policies and standards should be accorded authority equal to the Pinelands Comprehensive Management Plan and the other regional planning entities mentioned.

RESPONSE: The Governor has signed Executive Order No. 114 addressing the relationship between COAH and the Highlands and has [page=5999] directed COAH and the Highlands to enter into an memorandum of understanding within 60 days.

N.J.A.C. 5:97-3.14(b)

COMMENT: The amendment addresses the commenter's earlier comment as to whether all townhouses are subject to these provisions, but similar later provisions (N.J.A.C. 5:97-6.4(h) and 6.7(b)4) have not been so amended.

RESPONSE: The wording in N.J.A.C. 5:97-3.14(a) and (b) is the controlling factor and, therefore, no further change in N.J.A.C. 5:97-6.4(h) or 6.7(b)4 is necessary.

N.J.A.C. 5:97-3.16

COMMENT: The addition of language encouraging coordination with agencies such as FMERPA and the New Jersey Meadowlands Commission is welcome; regional planning makes sense in these circumstances. This language should be modified to make it consistent with A500.

RESPONSE: The Council appreciates the commenter's support. P.L. 2008, c. 46 (A500) will be the subject of a

future amendment.

N.J.A.C. 5:97-3.16(c)

COMMENT: These are nice words, but the requirement for each municipality to produce its own plan works against regional planning, except where already firmly in place (N.J.A.C. 5:97-3.16(d) and (e)). There is not time to develop any new regional planning.

RESPONSE: The enactment of P.L. 2008, c. 46 supersedes the regional planning provisions of N.J.A.C. 5:97-3.16. P.L. 2008, c. 46 will be the subject of a future rule amendment.

N.J.A.C. 5:97-3.17

COMMENT: The commenter notes that in their town, this rule would have resulted in and will in the future result in very poor land use planning to have affordable housing alongside incompatible land uses. The commenter believes that this juxtaposition of housing adjacent to warehousing is inconsistent with the *Mount Laurel* doctrine.

RESPONSE: The Council cannot respond appropriately to the commenter without more details regarding the situation described. The compliance bonus is designed to recognize municipalities that took steps to address their affordable housing obligation in accordance with COAH's rules in place at the time, N.J.A.C. 5:94 and 5:95. It is not intended to promote the juxtaposition of incompatible land uses.

COMMENT: This rule seems to try to address the issue of approvals and/or permits issued by the municipalities pursuant to Growth Share Ordinances that were adopted by the Townships based upon COAH's original third round rules and model growth share ordinance. This rule at subsection (a) refers to the following, "that received preliminary or final approval, or was the subject of an executed redevelopment agreement, between December 20, 2004 and June 2, 2008," which suggests that it may be an attempt to provide guidance to municipalities and developers that have approvals granted pursuant to municipal growth share ordinances. However, this rule is insufficient. COAH must propose rules that will provide clear guidance that would address the approvals granted to municipal growth share ordinances.

RESPONSE: The Council believes that the rule gives sufficient guidance to municipalities. The compliance bonus was designed to recognize municipalities for compliance with the Council's previously adopted third round rules, N.J.A.C. 5:94 and 5:95, specifically through the use of a growth share ordinance. The Council will honor the inclusionary developments that resulted from growth share ordinances that were implemented under the original third round rules. P.L. 2008, c. 46 addresses payments in lieu as part of previously approved non-residential developments and will be the subject of a future rule amendment.

COMMENT: The proposed compliance bonus does not provide an adequate offset for prior third round residential and commercial developments which were approved and charged affordable housing fees at the previous COAH growth share ratios. The new compliance bonus requires that the affordable units must be built on-site. This is often completely unachievable. It makes no sense, for example, to place affordable housing on-site in a warehouse park among large warehouses.

RESPONSE: Under the original third round rules, a growth share ordinance that permitted affordable housing to be built off-site, such as non-residential developments, typically did so in the form of an optional payment-in-lieu that would fund future construction. The Council has chosen to grant the compliance bonus only for units that have actually been constructed on-site, are in an approved inclusionary development, or are the subject of an executed development or redevelopment agreement for an inclusionary development.

COMMENT: This proposes a one for one bonus for approved affordable housing projects since December 2004. The League supports this bonus, as it rightly rewards municipalities who acted in good faith and relied on the earlier

promulgated regulations.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The commenter strongly opposes the one-for-one "compliance bonus," which dilutes the obligation arbitrarily and rewards towns for doing that which they were and are constitutionally obligated to do. The commenter feels that bonuses, which in the past were only given as incentives to achieve certain policy goals, should never be given to reward past behavior. Towns complied with COAH because that was the law.

RESPONSE: The Council believes that the compliance bonus creates an incentive for municipalities to participate in its process and is a valid means of recognizing municipalities for compliance with the Council's previously adopted third round rules, N.J.A.C. 5:94 and 5:95. These municipalities took steps to address their affordable housing obligation in accordance with COAH's rules in place at the time and are generally not in a position to rescind development approvals granted or executed development agreements made pursuant to those rules.

COMMENT: COAH's bonus credit scheme must be amended to grant a municipality bonus credits where the inclusionary developer (through no fault of the municipality) fails to meet contractual timing commitments/obligations to the municipality for obtaining preliminary approvals for inclusionary developments between December 20, 2004 and June 2, 2008 to implement a Municipal Fair Share Plan for the third-round COAH cycle.

RESPONSE: The Council does not believe it is appropriate to grant bonuses for units that did not receive municipal approvals or were not the subject of an executed agreement prior to June 2, 2008. The compliance bonus is designed to recognize municipalities that took steps to address their affordable housing obligation in accordance with COAH's rules in place at the time, N.J.A.C. 5:94 and 5:95. If approvals were granted after that date, the municipality and developer were aware of the requirements under the revised third round rules.

COMMENT: There is no public policy that warrants granting two units of credit because municipalities tried to respond to their post-1999 housing obligation. It is particularly troublesome that a municipality can receive a two for one credit for merely approving a development that includes affordable housing. Many of the approvals between 2004 and 2008 were based on ordinances that imposed one affordable unit for every eight market units without any density bonus. The COAH rule that authorized these ordinances was overturned by the Appellate Division. There is no basis for granting an extra credit for 2004-2018 compliance. There is no basis for granting an extra credit for approvals predicated on ordinances that were based on an unconstitutional rule. There is no basis for granting an extra unit of credit for a housing unit that may never be constructed.

RESPONSE: The Council believes that the compliance bonus creates an incentive for municipalities to participate in its process and is a valid means of recognizing municipalities for compliance with the Council's previously adopted third round rules, N.J.A.C. 5:94 and 5:95. These municipalities took steps to address their affordable housing obligation in accordance with COAH's rules in place at the time. If, at the time of plan evaluation pursuant to N.J.A.C. 5:96-10.1, the units receiving the bonus remain unbuilt, they would no longer be eligible for the compliance bonus.

COMMENT: The commenter sees no compelling reason for this bonus. We have consistently taken the position that bonuses inappropriately dilute the fair share obligation, which in any event is generally recognized to be far less itself than the actual need for low and moderate income housing. Every bonus further reduces the actual amount [page=6000] of affordable housing produced, and cannot be justified unless there is a compelling policy reason to support it. Moreover, that the policy reason will foster positive action prospectively on the part of municipalities. In this case, the only apparent reason for the bonus is that some municipalities moved forward on approving affordable housing during the hiatus created by the legal problems associated with COAH's initial third round rules, while most did not. One can appreciate COAH's desire to reward those municipalities' behavior. There is no reason to believe, however, that the projects which may receive bonuses under this proposed rule are particularly desirable from a planning or locational standpoint; moreover, it is impossible to tell what particular factors actually led the municipalities to approve these

projects. Moreover, since the bonus is purely retrospective, the reward that they will receive is unlikely to have any impact on the future behavior of other municipalities. In other words, once the new rules are in effect, there is not reason to believe that this bonus will prompt any municipality to act more aggressively to accommodate its fair share obligations or to take any other steps that better further public policy. For these reasons, there are no substantial reasons for this bonus that justify the dilution of the fair share obligation. This provision should be removed from the rules.

RESPONSE: The Council believes that the compliance bonus creates an incentive for municipalities to participate in its process and is a valid means of recognizing municipalities for compliance with the Council's previously adopted third round rules, N.J.A.C. 5:94 and 5:95. These municipalities took steps to address their affordable housing obligation in accordance with COAH's rules in place at the time and are generally not in a position to rescind development approvals granted or executed development agreements made pursuant to those rules.

COMMENT: Please state how many units COAH anticipates will be granted bonuses under this provision.

RESPONSE: The Council cannot predict how many compliance bonuses will be granted. The ability to seek these bonuses depends on the unique circumstances of a municipality's plan implementation as well as the specific components of its Fair Share Plan. For example, if a municipality chooses to seek other bonuses, such as rental bonuses, up to the 25 percent cap established under proposed N.J.A.C. 5:97-3.20(b), it would be ineligible for compliance bonuses. Further, if at the time of plan evaluation pursuant to N.J.A.C. 5:96-10.1, the units receiving the bonus remain unbuilt, they would no longer be eligible for the compliance bonus.

N.J.A.C. 5:97-3.17(a)

COMMENT: COAH should add "or developer's agreement" to the proposed new compliance bonus section. This is similar to many other COAH rule provisions which speak to approvals, redevelopment agreements and developer agreements as requirements to provide a realistic opportunity for the production of affordable housing.

RESPONSE: The commenter is correct. N.J.A.C. 5:97-3.17 was intended to apply to both new development and redevelopment, as evidenced by references to development or redevelopment in other parts of the section. The rule has been revised accordingly.

COMMENT: The language does not imply that the purchase of housing for "by right" use as group homes or similar supportive housing would be eligible for this two for one bonus. It should not, as it did not involve any extra work and because such a situation could be "by right" did not actually involve "doing the right thing." Any situation where a bed is getting counted for a credit shouldn't get a two for one bonus. The fact that a town is getting a credit for a bed is enough of a bonus, compared to building a real unit.

RESPONSE: The compliance bonus was designed to recognize municipalities for compliance with the Council's previously adopted third round rules, N.J.A.C. 5:94 and 5:95, specifically through the use of a growth share ordinance. The purchase of housing for "by right" use as group homes would generally not be eligible for a compliance bonus, because it does not require a zoning ordinance as required under paragraph (a)1 of this section.

COMMENT: The regulations should reflect that if a nonprofit developer was involved in the process that this partner should share in the benefit of the bonus. In other words, if the project advanced to the point where it was eligible for a bonus, that means it is likely the nonprofit partner assumed risks, costs, and probably did the majority of the work to move the project forward. Under the current language, the town reaps a windfall by getting bonus credits it otherwise would have had to contribute something towards, but the nonprofit doesn't get anything, even though they are at least an equal partner. That nonprofit partner should be entitled to compensation for extra credits. Suggest that the regs allow for a bonus to be received by the town, but that if the town was partnering with a developer for the 100 percent affordable housing that COAH must receive an agreement signed by both parties stipulating what, if anything, the town will be providing to the nonprofit partner to share in the benefit they helped to create above and beyond what had been

anticipated. That way, the nonprofit can negotiate with the town for things like money, an improved payment in lieu of taxes (PILOT), etc. and both parties win for having done the right thing.

RESPONSE: The bonuses offered in the proposed rules are designed to encourage municipalities to participate in the COAH process and to produce specific types of affordable housing, but, ultimately, the municipality is responsible for addressing its affordable housing obligation. Therefore, the Council does not believe that the rules should specify if and how a nonprofit partner should be compensated for its role in generating bonuses. The municipality is free to subsidize or otherwise assist a nonprofit partner if it chooses to do so.

COMMENT: N.J.A.C. 5:97-3.17(a)1 should be removed as a requirement for the compliance bonus. Conformance with N.J.A.C. 5:97-3.17(a)2 (that is, that the development approval or executed redevelopment agreement requires the provision of the affordable units) and N.J.A.C. 5:97-3.17(a)3 (that the unit is eligible for credit pursuant to COAH rules) should be sufficient to receive the compliance bonus as conformance with N.J.A.C. 5:97-3.17(a)2 and 3 clearly satisfies the intent of the compliance bonus (which is to reward communities that continued to pursue opportunities for affordable housing while the COAH rules were in flux). Conformance with N.J.A.C. 5:97-3.17(a)1 is unnecessary. It punishes communities that continued to pursue affordable housing opportunities, meeting N.J.A.C. 5:97-3.17(a)2 and 3, but which didn't have the opportunity to amend their Fair Share Plan to include the project in question.

RESPONSE: The Council agrees with the commenter that municipalities that pursued opportunities for affordable housing during this time should be rewarded. In general, it is the Council's understanding that these affordable housing opportunities were included in municipal fair share plans but if this was not the case, a municipality could seek a waiver with its petition pursuant to N.J.A.C. 5:96-15.2.

COMMENT: This should include towns that were approved under the old round three rules that have advanced projects. The procedural rules at N.J.A.C. 5:96-16.3(a) and (b) seem to say, if a town got approved under the old round three, it can either stick with those old rules or petition under the new rules. However, those towns have "done the right thing"--and done it faster. Thus they should absolutely be eligible for the compliance bonus. The conditions and schedule for towns to qualify for credits should not be limited only to towns who petitioned earlier. Some towns have been working with nonprofits to deliver affordable housing even though they may not have participated in COAH in the past. So they are in fact delivering the affordable housing units, which is the impetus for the bonus. Thus, if a town can be convinced to petition for substantive certification (on time or even late), they should be eligible for the full range of bonuses and benefits.

RESPONSE: N.J.A.C. 5:96-16.3 is being proposed to reflect the Council's continuation of N.J.A.C. 5:94 and 5:95, effective December 20, 2004, for the three municipalities, Buena Borough in Atlantic County, Washington Township in Morris County, and White Township in Warren County. These municipalities were previously granted substantive certification by the Council under these rules, and said certifications were upheld by the Appellate Division in *In re Adoption of N.J.A.C. 5:94 and 5:95 by the Council on Affordable Housing*, 390 *N.J. Super.* 1, (App. Div. 2007) *certif. den.*, 192 *N.J.* 71 (2007). The compliance bonus is intended to provide an incentive to municipalities for participating in the COAH process. The Council does not believe that the compliance bonus should be granted to municipalities that have already received substantive certification.

[page=6001] **N.J.A.C. 5:97-3.17(a)2**

COMMENT: The compliance bonus should apply to affordable units built either on or off-site. The proposed amendments offer a compliance bonus for affordable housing approved between December 20, 2004 and June 2, 2008. However, the amendments require that the affordable housing be built on-site. This requirement is unfair to all municipalities that made a good faith effort to comply with previous round three rules by adopting growth share ordinances. The growth share ordinances, pursuant to COAH rules, permitted affordable housing to be built off-site but within the municipality. These off-site affordable units, proposed during the time of the previous round three rules and resulting lawsuit, should be eligible for the same bonus as the on-site affordable units. The municipality should be

rewarded for mandating the provision of affordable housing via the growth share ordinance. There is no reason to distinguish between affordable housing provided on or off-site in terms of compliance bonuses. The affordable housing units will still be located within the municipality. Towns that required the affordable units, whether on or off-site, should be rewarded via the compliance bonus for proactively planning for affordable housing during a time that other towns ignored the issue altogether.

RESPONSE: Under the original third round rules, a growth share ordinance that permitted affordable housing to be built off-site typically did so in the form of an optional payment-in-lieu that would fund future construction. The Council has chosen to grant the compliance bonus only for units that have actually been constructed on-site, are in an approved inclusionary development, or are the subject of an executed development or redevelopment agreement for an inclusionary development.

N.J.A.C. 5:97-3.17(a)3

COMMENT: It appears the citation to N.J.A.C. 5:96 is incorrect in this paragraph.

RESPONSE: The commenter is correct. The citation should be N.J.A.C. 5:97-4 and will be corrected upon rule adoption.

N.J.A.C. 5:97-3.17 and 3.18

COMMENT: What is the extent of dilutions of the constitutional housing obligation (Projected Growth Share) anticipated by COAH from each of the three proposed bonuses by 2018? P.L. 2008, c. 46, §3 requires a "housing affordability impact statement" and a "smart growth development impact statement" as part of rulemaking, albeit for the proposed rule. COAH should nevertheless comply with the spirit of this new requirement by projecting and publishing the dilution from these three proposed new bonuses. COAH should also consider the results of this analysis when deciding whether to adopt these bonuses.

RESPONSE: The Council cannot predict how many of the proposed bonuses will be granted. The ability to seek these bonuses depends on the unique circumstances of a municipality's plan implementation and the unique characteristics of each municipality such as proximity to public transit, Planning Area and/or center designation, land use mix, and development patterns. The specific components of a municipality's Fair Share Plan are also a factor. For example, if a municipality chooses to seek Smart Growth bonuses up to the 25 percent cap established under proposed N.J.A.C. 5:97-3.20(b), it would be ineligible for additional bonuses.

COMMENT: What are the rationales for diluting the constitutional housing obligation with these three new bonuses? A "bonus" that deprives low and moderate income households of affordable housing opportunities merely because municipalities actually took steps to comply with their well-known constitutional housing obligations, that is, the "compliance bonus," has no credible basis. As the proposed bonuses dilute the constitutional housing obligation, and are unlikely to act as a compelling incentive for affordable housing that would not otherwise be developed, the proposed amendments to create the bonuses should not be adopted. If COAH insists on adopting the three proposed new bonuses, their proposed requirements are reasonable.

RESPONSE: The Council recognizes the importance of providing incentives to promote participation in the COAH process and the production of certain types of affordable housing. The Council believes that the compliance bonus is a valid means of recognizing municipalities for compliance with the Council's previously adopted third round rules, N.J.A.C. 5:94 and 5:95. These municipalities took steps to address their affordable housing obligation in accordance with COAH's rules in place at the time. Both the smart growth bonus and the redevelopment bonus are consistent with the land use policies within the State Development and Redevelopment Plan. To be eligible for a smart growth bonus,

transit-oriented development in Planning Areas 1 or 2 or designated centers must be characterized by land use characteristics such as compact development, a mix of uses, higher densities, pedestrian-friendly, and transit-supportive site design. Similarly, redevelopment enables a municipality to address its affordable housing obligation in a manner that takes advantage of existing infrastructure and capacity while minimizing impacts on undeveloped environmentally sensitive land. Redevelopment typically occurs at densities conducive to the production of affordable housing and in areas that are well located with respect to transportation and employment.

N.J.A.C. 5:97-3.18

COMMENT: Please state how many units COAH anticipates will be granted bonuses under this provision.

RESPONSE: The Council cannot predict how many smart growth bonuses will be granted. The ability to seek these bonuses depends on the unique characteristics of each municipality such as proximity to public transit, Planning Area and/or center designation, land use mix, and development patterns. The specific components of a municipality's Fair Share Plan are also a factor. For example, if a municipality chooses to seek other bonuses, such as rental bonuses, up to the 25 percent cap established under proposed N.J.A.C. 5:97-3.20(b), it would be ineligible for smart growth bonuses.

COMMENT: The commenter supports the proposed bonus of 0.33 credits per affordable housing unit built in a Transit Oriented Development (TOD) in Planning Area 1 or 2 or a designated center and that meets the criteria in the COAH proposal. This bonus will provide an important incentive for municipalities to encourage compact inclusionary development and redevelopment that builds upon New Jersey's significant public investment in public transit infrastructure.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The commenter supports development in smart growth areas; however, the smart growth bonus offered within a Transit Oriented Development (TOD) in Planning Area 1 or 2 or designated center is inaccessible to rural municipalities who have limited abilities to create a TOD. It appears that few amendments identify bonus credit opportunities available to rural municipalities which lack public transportation and are constrained by infrastructure capacity.

RESPONSE: The Council has chosen to provide a variety of incentives for the production of affordable housing, including the smart growth bonus for TOD in Planning Areas 1 or 2 or designated centers, which promotes the goals, policies and objectives of the State Development and Redevelopment Plan. Although rural municipalities may have fewer opportunities to create TOD, those with designated centers may be eligible to utilize the bonus. Other bonuses that are available to rural municipalities include rental bonuses, very low income bonuses, compliance bonuses, and possibly redevelopment bonuses.

COMMENT: The one-third bonus for "transit oriented development" is in direct conflict with the provisions of recently passed housing legislation (A500) which mandate that 20 percent of "transit oriented development" will be affordable housing. This proposed amendment would reduce that amount of affordable housing below that level, and should be deleted.

RESPONSE: P.L. 2008, c. 46 will be the subject of future rule amendments. The proposed amendment does not conflict with the statute.

COMMENT: The smart growth bonus does not actually meet the affordable housing need and dilutes the affordable housing obligation. Further, the smart growth bonus does not provide a needed incentive for building affordable housing. Towns have enough of an incentive to provide affordable housing near transit through the requirements in A500 and the general need to meet their *Mount Laurel* obligations which in many towns only will be possible near transit anyway due to the location of all land in the municipality near transit.

RESPONSE: The Council believes that the smart growth bonus provides an incentive for the production of affordable housing in areas [page=6002] that are consistent with the land use policies of the State Development and Redevelopment Plan. To be eligible for a smart growth bonus, transit-oriented development in Planning Areas 1 or 2 or designated centers must be characterized by land use characteristics such as compact development, a mix of uses, higher densities, pedestrian-friendly, and transit-supportive site design.

COMMENT: The smart growth bonus is far too broad. In many cases, the entire town is within one-half mile of a bus stop--though some bus routes may only run a few times a day. In other cases, a development may be within one-half mile drawing a straight line, but have no way to actually access transit. In effect, this simply slashes many towns' entire obligation by one-third, without providing any real smart growth benefit--instead simply diluting the constitutional obligation. COAH needs to define transit-oriented development much more narrowly, perhaps only as transit villages and urban transit hubs with a 20 percent set-aside as required by A500.

RESPONSE: The definition of "Transit Oriented Development," at N.J.A.C. 5:97-1.4, goes beyond a simple one-half mile delineation. To be eligible for a smart growth bonus, a transit oriented development must also be characterized by land use characteristics such as compact development, a mix of uses, higher densities, pedestrian-friendly, and transit-supportive site design. The Council believes that these criteria are adequate as a basis for evaluating bonus eligibility. The Council does agree that the word "stop" could be too loosely interpreted and will be clarified to read "station."

COMMENT: The commenter disagrees with the idea of providing bonuses for projects in smart growth and redevelopment areas. The commenter also notes that the compliance bonus only covers a four-year period, while the smart growth and other bonuses kick in starting in 1999. This seems like too much of a giveaway, especially as smart growth has only reached a tipping point in the last few years. However, in the event these are not removed from the regulations, the commenter would propose that another bonus category be added after smart growth, entitled "Green Building." The smart growth goals of environmental benefits and improved quality of life for residents of the affordable housing can be met as well or even better by projects that are developed using the highest level of green building techniques. Not just "Energy Star," not even just the minimum threshold of State affordable housing green requirements. The commenter is talking about something like a maximum score on state green building matrix, or a LEED designation (perhaps even an elevated one, not just "LEED Certified").

RESPONSE: The Council believes that the smart growth and redevelopment bonuses are appropriate incentives for the production of affordable housing that is consistent with the policies of the State Development and Redevelopment Plan. The compliance bonus is provided to recognize municipalities for compliance with the Council's previously adopted third round rules, N.J.A.C. 5:94 and 5:95. These municipalities took steps to address their affordable housing obligation in accordance with COAH's rules in place at the time. The eligible time period for the compliance bonus begins on December 20, 2004, rather than June 6, 1999, because COAH's original third round rules establishing the one for eight affordable housing ratio were adopted at that time. The Council endorses green building techniques and encourages the use of affordable housing trust funds for green building strategies designed to be cost-saving for low-and moderate-income households. The Council believes that the permitted use of trust funds for such purposes is an adequate incentive for the use of green building techniques.

COMMENT: This bonus is arbitrary. It should be deleted. Towns are not deserving of bonus credit for doing that which they are required to do, that is, produce affordable housing.

RESPONSE: The Council disagrees with the commenter. Bonuses provide important incentives to promote participation in the COAH process and the production of certain types of affordable housing. The smart growth bonus is consistent with the land use policies within the State Development and Redevelopment Plan. To be eligible for a smart growth bonus, transit-oriented development in Planning Areas 1 or 2 or designated centers must be characterised by land use characteristics such as compact development, a mix of uses, higher densities, pedestrian-friendly, and transit-supportive site design.

N.J.A.C. 5:97-3.18 and 3.19

COMMENT: The 1.33 bonus to promote development consistent with "smart growth" should be higher. As proposed, the regulations are inconsistent with the State Plan. A higher bonus will provide an incentive to provide housing for all incomes and help spur redevelopment.

RESPONSE: The Council believes that the one-third bonus is an adequate incentive to promote affordable housing within smart growth and redevelopment areas and believes the proposed rules are consistent with the State Plan. The commenter does not explain how the proposed rules are inconsistent with the State Plan, so the Council cannot respond to his assertion.

N.J.A.C. 5:97-3.19

COMMENT: Rural municipalities have limited access to redevelopment bonuses and credits because they have fewer areas of redevelopment opportunities. Rural municipalities are at a disadvantage for these development credits.

RESPONSE: The Council has chosen to provide a variety of incentives for the production of affordable housing, including the redevelopment bonus, which promotes the goals, policies and objectives of the State Development and Redevelopment Plan. Redevelopment enables a municipality to address its affordable housing obligation in a manner that takes advantage of existing infrastructure and capacity while minimizing impacts on undeveloped environmentally sensitive land. Redevelopment typically occurs at densities conducive to the production of affordable housing and in areas that are well located with respect to transportation and employment. Although rural municipalities may have fewer opportunities to encourage redevelopment as an affordable housing mechanism, they are not precluded from doing so or from seeking the bonus. Other bonuses that are available to rural municipalities include rental bonuses, very low income bonuses, compliance bonuses, and possibly smart growth bonuses.

COMMENT: The redevelopment bonus does not actually meet the affordable housing need and dilutes the affordable housing obligation. COAH has provided no rationale for how affordable housing as part of a redevelopment provides any benefit to low- and moderate-income households distinct from the general benefit to low- and moderate-income households from building affordable housing, especially given that COAH already has a separate bonus for smart growth. What benefit to low- and moderate-income households--who are in many instances displaced by redevelopment from housing without affordability controls--justifies this bonus?

RESPONSE: The Council has chosen to provide an incentive for affordable housing in redevelopment areas because it is consistent with sound planning principles and promotes the goals, policies and objectives of the State Development and Redevelopment Plan. By meeting its affordable housing obligation within redevelopment areas, a municipality can take advantage of existing infrastructure and capacity while minimizing impacts on undeveloped environmentally sensitive land. Redevelopment typically occurs at densities conducive to the production of affordable housing and in areas that are well located with respect to transportation and employment. The smart growth bonus promotes similar objectives but also allows for the possibility of affordable housing development to occur outside of a designated redevelopment area. The commenter should note, however, that in no event shall a municipality receive more than one type of bonus for each affordable unit. With regard to displaced low- and moderate-income households, the amended rules at N.J.A.C. 5:97-6.6(f)2 allow these residents to be given preference over other applicants for referral to the new affordable units within the redevelopment area, provided that they meet income eligibility requirements.

COMMENT: The commenter feels this bonus is arbitrary and should be deleted.

RESPONSE: The Council disagrees with the commenter. Bonuses provide important incentives to promote participation in the COAH process and the production of certain types of affordable housing. The redevelopment bonus is consistent with the land use policies within the State Development and Redevelopment Plan. Redevelopment enables

a municipality to address its affordable housing obligation in a manner that takes advantage of existing infrastructure and capacity while minimizing [page=6003] impacts on undeveloped environmentally sensitive land. Redevelopment typically occurs at densities conducive to the production of affordable housing and in areas that are well located with respect to transportation and employment.

COMMENT: To the extent that COAH provides a one-third bonus to municipalities that provide affordable units through redevelopment, the bonus should **only** be awarded to the net increase in affordable housing that results after subtracting any housing that is affordable to low and moderate income residents, including private-market housing, that is lost through redevelopment in the same community. For example, if a town allows 20 private-market homes that are currently affordable to low and moderate income residents to be demolished as the result of redevelopment, and builds 20 new affordable units, it should not receive a bonus. If it builds 30 new affordable units, it should only receive the bonus on the 10 units (of which at least half must be for families) over and above the units that have been removed from the housing stock.

RESPONSE: P.L. 2008, c. 46, which was enacted on July 17, 2008, requires a one-for-one replacement of deed-restricted COAH affordable units demolished as a result of implementation of a redevelopment plan and prohibits the crediting of such replacement units toward a municipality's affordable housing obligation (if the demolished units had been previously credited). P.L. 2008, c. 46 will be the subject of a future rule amendment. The Council believes the proposed bonus is consistent with the statute.

COMMENT: Please state how many units COAH anticipates will be granted bonuses under this provision.

RESPONSE: The Council cannot predict how many redevelopment bonuses will be granted. The ability to seek these bonuses depends on the unique characteristics of each municipality and the extent to which redevelopment is a suitable mechanism for the production of affordable housing. The specific components of a municipality's Fair Share Plan are also a factor. For example, if a municipality chooses to seek other bonuses, such as rental bonuses, up to the 25 percent cap established under proposed N.J.A.C. 5:97-3.20(b), it would be ineligible for redevelopment bonuses.

N.J.A.C. 5:97-3.20

COMMENT: The proposed bonus caps provide reasonable and important limitations on bonuses, while still encouraging municipalities to make possible the development of affordable rental housing, TODs, and redevelopment that creates affordable housing. The commenter supports the proposed caps.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: Whereas the commenter supports N.J.A.C. 5:97-3.17 as a positive step in helping to alleviate the financial burden that municipalities will face in meeting their retroactive obligation, it is the commenter's position that the 25 percent bonus cap will effectively reduce any significant benefit that the bonus would have had. The 25 percent bonus cap is unreasonable. At a bare minimum, the cap should not apply to the use of compliance bonuses to ensure that the new rules address the fact that there is no other available mechanism by which municipalities can meet the retroactive obligation on projects that have already been built of received land use approvals.

RESPONSE: The Council believes that the compliance bonus creates an incentive for municipalities to participate in its process and is a valid means of recognizing municipalities for compliance with the Council's previously adopted third round rules, N.J.A.C. 5:94 and 5:95. These municipalities took steps to address their affordable housing obligation in accordance with COAH's rules in place at the time. However, the Council also recognizes the need to limit the number of bonuses granted to municipalities to protect against a disproportional impact on the production of affordable housing and for that reason has established a bonus cap of 25 percent, which is equivalent to what was permitted with regard to rental bonuses (up to 25 percent) in the second round.

COMMENT: If COAH is to grant extra credit for affordable housing, it is imperative that the extra credit be limited

to protect against an unwarranted dilution of the housing obligation. Therefore, it is imperative that COAH cap all extra credits (including rental bonuses, compliance bonuses, extra credit for building in a redevelopment area, and extra credit for very low income housing) at no more than 25 percent of the housing obligation as proposed at N.J.A.C. 5:97-3.20.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The 25 percent maximum set aside should not be adopted. The maximum percentage should instead be based on the economics of the project.

RESPONSE: The presumptive minimum densities and presumptive maximum set-asides referenced in the rule are used for the purpose of establishing realistic opportunities for the construction of affordable housing as part of a municipal petition for substantive certification. These maximum and minimum figures may be altered to achieve higher or lower set-asides and higher or lower densities subject to local development conditions, financial feasibility and the prudent use of land. When analyzing sites and/or zones that may be suitable for inclusionary development, municipalities should also consider densities and set-asides that reflect local conditions. In considering local conditions, municipalities should evaluate land, labor and materials costs as well as the extent to which density increases are provided and set-asides are required. Municipalities utilizing density and set-aside standards that differ from the general standards set forth in the rule proposal must demonstrate that the proposed zoning provides a realistic opportunity for the construction of affordable housing including evidence that the proposal provides adequate compensatory benefits to developers. Additionally, developers of affordable housing rely on predictability when evaluating profit potentials during the land acquisition phase of development and municipal planners rely on zoning requirements to determine the ability of zoned sites to implement a fair share plan. Therefore, it is essential that municipal zoning set forth general parameters that outline municipal expectations. The recent signing into law of P.L. 2008, c. 46 contains provisions that allow municipalities and developers to jointly seek Council approval of reduced affordable housing set-asides or increased densities to ensure the economic feasibility of an inclusionary development and contains other provisions related to the economic feasibility of inclusionary developments. A future amendment to the Council's rules will provide additional guidance on this issue.

N.J.A.C. 5:97-3.20(b)

COMMENT: This limitation works against the encouragement to provide family rental units under N.J.A.C. 5:97-3.6. For some municipalities, family rental units may be the most appropriate form of low and moderate unit and that which builders are most interested in developing (particularly in the present state of the housing market).

RESPONSE: The Council disagrees with the commenter. The proposed rules offer a variety of bonuses designed to promote participation in the COAH process and to encourage the production of specific types of affordable housing, including family rentals. However, the Council recognizes the need to limit the number of bonuses granted to municipalities to protect against a disproportional impact on the production of affordable housing. The Council encourages not just family rentals but also housing for very low income households, transit oriented development, and redevelopment. A municipality is free to seek whichever bonuses are most consistent with the character of that community up to the 25 percent cap. If, as noted by the commenter, family rental units are considered the most appropriate form of low and moderate unit for a particular community, that municipality may choose to seek only rental bonuses up to the 25 percent cap. The commenter should note that the cap is equivalent to what was permitted with regard to rental bonuses (up to 25 percent) in the second round.

COMMENT: COAH should eliminate the bonus cap. The cap punishes municipalities that have done just what COAH wanted by providing more family rental units and fewer for sale and age-restricted units and eliminates the incentive for doing so in the future because no bonus credits accrue from them given the number of bonuses they have already accrued. It also fails to recognize such municipalities' reliance on COAH rules that provided for the rental bonuses. In proposed N.J.A.C. 5:97-3.17, COAH added a bonus for communities approving affordable housing projects when the growth share ratio was one affordable unit for every eight market units, recognizing that these communities'

reliance upon that ratio, which has since been changed to one to four, must be [page=6004] taken into account. So too, COAH should respect municipalities' provision of family rentals in reliance upon the bonus credit rules and not apply a cap after the fact. COAH has made it much more difficult for a community that was providing precisely the kind of affordable housing that is needed and that COAH was encouraging, namely, family rental units. COAH should recognize and respect these efforts. At the very least, it should interpret proposed N.J.A.C. 5:97-3.20(b) as being 25 percent of the total gross growth share, using COAH projections, before municipally-generated subtractions reduce the number to a net. If not enough affordable units are produced State-wide in the third round, the deficit State-wide can, and should, be carried over to the fourth round.

RESPONSE: The proposed rules offer a variety of bonuses designed to promote participation in the COAH process and to encourage the production of specific types of affordable housing. The Council encourages not just family rentals but also housing for very low income households, transit oriented development, and redevelopment. In addition, the compliance bonus is specifically designed to recognize municipalities for compliance with the Council's previously adopted third round rules, N.J.A.C. 5:94 and 5:95. As noted by the commenter, these municipalities took steps to address their affordable housing obligation in accordance with COAH's rules in place at the time and should be acknowledged. However, the Council also recognizes the need to limit the number of bonuses granted to municipalities to protect against a disproportional impact on the production of affordable housing and for that reason has established a bonus cap of 25 percent, which is equivalent to what was permitted with regard to rental bonuses (up to 25 percent) in the second round. The Council believes that it is appropriate to calculate the 25 percent cap from the projected growth share because that is the obligation upon which a municipality's Fair Share Plan is based. If the municipality uses higher municipal projections pursuant to N.J.A.C. 5:97-2.3(d), then the 25 percent cap would be applied to the projected growth share obligation based on those higher projections.

COMMENT: The bonus cap is antithetical to COAH objectives and should be eliminated. It violates fundamental notions of fair play since it punishes those municipalities that have accrued bonus credits in reliance on COAH rules. More importantly, however, the cap devalues the effectiveness of bonuses as a tool encouraging behavior that COAH wants to promote. A bonus to reward behavior desired by COAH has no value and will not encourage that behavior if COAH demonstrates a willingness to revoke those bonuses after the fact. The bonus cap demonstrates just such a willingness to revoke bonuses after the fact. The bonus cap is discouraging to anyone who might otherwise consider taking advantage of bonuses offered in the regulations. COAH must preserve the value of the incentives inherent in bonuses by removing the cap.

RESPONSE: The Council recognizes the importance of providing an incentive for certain types of affordable housing, such as rental housing and housing within Transit Oriented Development or redevelopment areas, and for that reason has included bonus provisions in its regulations. However, the Council also recognizes the need to limit the number of bonuses granted to municipalities to protect against a disproportional impact on the production of affordable housing. The commenter should note that Council will honor bonuses that were previously granted as part of a municipality's substantive certification, provided the bonuses are associated with mechanisms that still present a realistic opportunity.

N.J.A.C. 5:97-4.3

COMMENT: The commenter feels this section should be deleted as it dilutes the obligation arbitrarily. Why not building permits? Why not certificates of occupancy?

RESPONSE: In many instances, developers go in for approvals with the understanding that the affordable units must comply with the criteria of the rules in effect at the time of approvals. It is the intent of the rule that municipalities will receive credit according to the criteria in place at the time.

N.J.A.C. 5:97-4.3(a)

COMMENT: Explain why COAH is changing the crediting of units occupied on or after December 15, 1986, 1994 and 2001, to require preliminary and final approvals after those dates, as opposed to creation and occupancy after those dates. It would appear that in making the change, units that received preliminary or final approvals prior to those dates are now to be denied credits.

RESPONSE: The rule was amended to provide more flexibility to municipalities for the crediting of affordable units. In many instances, developers go in for approvals with the understanding that the affordable units must comply with the criteria of the rules in effect at the time of approvals. It is the intent of the rule that municipalities will receive credit according to the criteria in place at the time.

N.J.A.C. 5:97-4.3(a)3

COMMENT: This indicates that affordable units that received preliminary or final approvals between October 1, 2001 and December 20, 2004 had to meet the criteria of N.J.A.C. 5:97-9.

RESPONSE: Municipalities will receive credit according to the criteria in place at the time. N.J.A.C. 5:97-4 represents the compilation of crediting criteria from N.J.A.C. 5:93 and N.J.A.C. 5:94; therefore, the rule covers the commenter's concerns.

N.J.A.C. 5:97-4.3(h)

COMMENT: This section would deny credits for any affordable unit constructed using the low income housing tax credit program or balanced housing program if it is not in the housing element and fair share plan submitted as of May 6, 2008. Please explain the reason for such an addition to the regulations. With COAH now interpreting the third round to include the entire prior round, and then subtracting various credits for satisfaction of prior obligations, (as opposed to only considering remaining prior round obligations), it appears to be fundamentally unfair to deny any credit that achieved compliance with prior obligations.

RESPONSE: Affordable units are not deemed to have achieved compliance with prior obligations unless credited as part of a certified municipal fair share plan. These units were used to reconcile the prior round need number published in 1993 with the recalculated prior round need number so that municipalities that have been participating in COAH's process will not have adjusted prior round need numbers that conflict with previously certified plans.

N.J.A.C. 5:97-4.5(c)

COMMENT: Please explain why COAH is establishing greater restrictions on rehabilitation credits for units rehabilitated in the past. The purpose of the addition is unclear.

RESPONSE: A new N.J.A.C. 5:97-4.5(c) was added and N.J.A.C. 5:97-4.5(d) (previously N.J.A.C. 5:97-4.5(c)) was corrected to require that units rehabilitated on or after December 20, 2004 but before June 2, 2008 be subject to a minimum \$ 10,000 hard cost expenditure and affordability controls of 10 years for owner-occupied and renter-occupied units, because this is consistent with the Council's rules in effect at the time, N.J.A.C. 5:94.

N.J.A.C. 5:97-5

COMMENT: Variable presumptive densities based on the location of vacant sites in urban centers and planning areas have been included in the proposed amendments. However, the proposed change needs to go one step further by establishing more refined presumptive densities unique to each of the COAH Housing Regions, which acknowledge differences in the densities, scale and character of cities, suburban and rural communities comprising each of the Housing Regions.

RESPONSE: The rules were amended to provide different minimum units and jobs per acre based on planning

areas, centers, sewer service areas and areas outside of sewer service areas in conformance with the proposed amendments to zoning requirements in N.J.A.C. 5:97-6.4. The Council believes that these presumptive densities are consistent with the New Jersey State Development and Redevelopment Plan, which fosters smart growth. It is not possible to establish Statewide regulations that reflect precise specificity in 566 individual sets of circumstances or even to reflect the differences between different municipalities all located in one type of planning area. However, the Council believes that density standards set forth in the rules are generally consistent with characteristics used to describe the various planning areas included in the SDRP. Moreover, the Council's reliance on septic density standards issued by the NJDEP provide further consistency with general Statewide policies on the nature and location of residential development. It should [page=6005] be noted that the "presumptive minimum" densities and "presumptive maximum" set-asides referenced in the rule are used for the purpose of establishing realistic opportunities for the construction of affordable housing as part of a municipal petition for substantive certification. As permitted elsewhere in the rule, these maximum and minimum figures can be altered to achieve different set-asides and/or densities subject to demonstration of financial feasibility.

COMMENT: In order to provide a more accurate vacant land analysis for residential and non-residential lands, the zoning of those vacant lands must be taken into account. When calculating third round plan municipal obligations, using COAH's residential density matrix, will current municipal zoning be used to determine accurately where appropriate lands for affordable housing exists? How will development be affected where there are discrepancies between zoning ordinance bulk and use restrictions and where the presumptive densities may not feasibly exist?

RESPONSE: In order to respond to the Appellate Division's concerns in *In the Matter of the Adoption of N.J.A.C.* 5:94 and 5:95, supra, the Council determined that an adjustment to these projections should only be warranted by lack of available land capacity and not by factors that are within the municipality's control, a process similar although not identical to the vacant land adjustment process. Like the vacant land adjustment process, the Council believes that uniform minimum dwelling units and jobs per acre is a reasonable approach. The growth projection adjustment process was intentionally designed to create predictability for all parties, as with the vacant land adjustment. With the growth projection adjustment, the Council is looking at the developable sites in relation to all growth. The market rate growth is therefore adding to the municipality's growth share obligation. However, with both adjustments, the municipality is not required to zone these sites for inclusionary development and may address its realistic development potential (RDP) or adjusted growth share obligation using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6.

COMMENT: Municipalities should be allowed to seek adjustments before filing a COAH petition. When the underlying data relied upon is suspect, it contravenes any rational approach to require towns to zone at higher, unachievable projections before submitting a petition, and then being authorized to seek adjustments.

RESPONSE: The provision allowing municipalities to request the Council's review of its adjustment prior to submitting its petition for substantive certification was deleted because of numerous comments concerning public review of the municipality's adjustment request and supporting documentation. However, COAH staff are available at any time to meet with municipalities regarding requests for a growth projection adjustment.

N.J.A.C. 5:97-5.1(b)

COMMENT: The adopted version of this section made it impossible for municipalities to comply with their growth share obligation if they had obtained a vacant land adjustment and had unmet need. While the entire concept of unmet need should be abandoned, and vacant land adjustments be true adjustments, the change would appear to correct what was an onerous provision in the adoption. However, the last provision at the end of the addition: "provided credits have first been applied to the RDP" adds confusion, and undercuts the flexibility the balance of the particular amendment provides. It should make no difference if approvals obtained in the third round are applied to RDP or growth share.

RESPONSE: The Council appreciates the commenter's support. The Council believes that if a municipality has not already received a vacant land adjustment, it must apply its credits to the unmet need first and submit a plan to address

the RDP. If the unit was constructed after June 6, 1999, the municipality may apply the credit to the RDP or unmet need, at the municipality's discretion, provided the credit was not a mechanism previously included in the plan to address unmet need. At the time of petition, municipalities may apply credits for units constructed after June 6, 1999, to the growth share obligation provided the RDP has been fully addressed. The Council believes that the RDP must be addressed first before credits for built units may be applied to the growth share obligation.

COMMENT: COAH adopted a crediting policy in the June 2, 2008 New Jersey Register that corrects its error in applying credits. At N.J.A.C. 5:97-5.1(b), COAH has determined that credits shall be applied to the unmet need prior to realistic development potential. However, COAH has totally gutted the rule in its June 16, 2008 rule proposal. If a municipality has created or approved housing after June 6, 1999 the municipality has the option to apply these credits to the realistic development potential and to the growth share prior to applying the credits to the unmet need. This is not acceptable and the proposed amendment must not be adopted. COAH has abandoned the concept of unmet need with this rule proposal. If a municipality is not required to address the unmet need, COAH should reallocate the unmet need to municipalities that have sufficient land to address it.

RESPONSE: Units created after June 6, 1999, were created alter the second round need period. Therefore, the Council believes it is appropriate to allow these units to count toward the RDP. Municipalities must provide a response to the unmet need in accordance with N.J.A.C. 5:97-5.3. The Council does, in fact, require meaningful plans for unmet need. Pursuant to N.J.A.C. 5:97-5.3, all components designed to address unmet need as part of a municipality's prior round certification or judgment of compliance must continue in full force and any affordable housing units created will be credited toward unmet need until such time as the municipality has provided for its entire unmet need. Furthermore, the Council intends to conduct a thorough review of vacant land adjustments for all municipalities that did not implement all of the terms of the substantive certification or judgment of compliance.

COMMENT: The regulation should be amended to allow a municipality that has been given a vacant land adjustment the flexibility to apply mechanisms used to address its unmet need to apply to its growth share obligation. Otherwise, a municipality will suffer extreme prejudice by having vigorously sought to address its unmet need. Atlantic Highlands is an excellent example. The Borough went to great lengths to address its unmet need. As a result of the vigor with which the Borough went to address its unmet need, it has fewer means available to it to address its growth share. Therefore, while developed municipalities tend to have lower growth share responsibilities, if they lack vacant land and have vigorously sought to address their unmet need, they have no practical way to come up with still more affordable housing. COAH's assumption that they do creates an impossible situation that can only generate frustration, not more affordable housing.

RESPONSE: The Council does not consider unmet need as a permanent adjustment to municipal affordable housing obligations. Municipalities are still required to provide a response to the unmet need in accordance with N.J.A.C. 5:97-5.3. The Council requires meaningful plans for unmet need. If a municipality proposed a mechanism to address its unmet need in a prior Housing Element and Fair Share Plan, the Council believes that mechanism should continue to address the municipality's unmet need until such time as the municipality has provided for its entire unmet need. However, pursuant to N.J.A.C. 5:97-2.4(a), municipalities may exclude from the residential projection and actual growth affordable units and market rate units in an inclusionary or mixed-use development where these affordable housing units received credit in a first or second round certified plan or a court judgment of compliance or are eligible for credit pursuant to N.J.A.C. 5:97-4 toward a municipality's prior round obligation, which have been or are projected to be constructed after January 1, 2004, provided the set-asides comply with the regulation. This includes projects that are addressing a municipality's unmet need will not add to the municipality's growth share obligation.

COMMENT: Please describe the purpose of the change to this regulation involving credits to unmet need, RDP, and growth share. Please state how the amended regulation will operate differently than the existing regulation.

RESPONSE: If a municipality previously received a vacant land adjustment as part of a second round substantive

certification, at the time of petition, it must apply all credits to its RDP first at the time of petition and then any remaining credits may apply to the unmet need or growth share obligation at its discretion. However, if the unit was a mechanism previously included in the plan to address unmet need, then the unit must continue to apply to the unmet need. If a municipality is requesting a vacant land adjustment for the first time or whose vacant land adjustment was not granted as part of a second round substantive certification, it [page=6006] must apply credits built before June 6, 1999, toward its unmet need at the time of petition prior to applying credits toward its RDP. This is essentially the same as applying credits toward the total obligation first, before an RDP on the municipality's vacant land is established. Units that are constructed after June 6, 1999 may be applied toward RDP or unmet need, provided the unit was not a mechanism previously included in the plan to address unmet need. Municipalities may apply credits for units constructed after June 6, 1999, to the growth share obligation provided the RDP has been fully addressed. The Council believes that the RDP must be addressed first before credits for built units may be applied to the growth share obligation.

N.J.A.C. 5:97-5.2

COMMENT: The rule and 40 N.J.R. 2770 say that COAH will review municipal plans for the unmet need and may require additional mechanisms to address the unmet need. Since COAH rarely required any meaningful plan to address the unmet need, this review is crucial. It should welcome redevelopment ideas from the private sector as part of that review.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: This amendment requires an inventory of municipal vacant parcels specifying Planning Area. The Planning Area designations within Hunterdon County have changed dramatically since the 2001 adopted State Plan Policy Map. The Draft 2006 Environmental Update Map reduced the area within Planning Area 2 and the Draft 2007 Cross-Acceptance Planning Area discussions with OSG during Negotiations eliminated Planning Area 2 from Hunterdon County entirely. The State Plan Policy Map is not expected to be adopted until the end of the year; how will these changes be reflected in the corresponding obligation?

RESPONSE: The municipality must provide the Council with the current planning areas of these parcels, which will be used in assigning site densities for the purposes of determining a municipality's realistic development potential (RDP). The currently adopted SPPM is the correct map to use. This map is updated periodically to reflect additional plan endorsement petitions that have been approved by the State Planning Commission. The most recent SPPM has been amended through May 20, 2008. However, the municipality should also submit any anticipated changes regarding planning areas with its petition. It is important to note that with both the vacant land adjustment and the growth projection adjustment, the municipality is not required to zone these sites for inclusionary development and may address its RDP or adjusted growth share obligation using any of the other compliance mechanisms provided in N.J.A.C. 5:97-6.

N.J.A.C. 5:97-5.2(b)

COMMENT: The rule says "The municipality shall identify sites that are realistic for inclusionary development in order for the Council to calculate the municipality's RDP." There is a wide gap between "realistic opportunity" as defined in N.J.A.C. 5:97-1.4--sites where "there is a reasonable likelihood that the affordable housing . . . will actually be constructed"--and the apparent definition under N.J.A.C. 5:97-5.2(d), all lands that are not specifically excludable under one of its provisions, including sites already developed.

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-5.2(c)6

COMMENT: The phrase "has the potential to be redeveloped" is an extremely vague phrase, vaguer even than "ripe for redevelopment," which at least suggests strong indications that a site ought to be redeveloped. It poses the possibility that an entire application for vacant land adjustment could be thrown out because the municipality failed to include a parcel that in the opinion of a COAH staffer "had the potential to be redeveloped."

RESPONSE: The Council does not believe that criteria is necessary for identifying sites that may be viable for adaptive reuse or redevelopment activity. This depends on the specific nature of the property, as well as many other factors, and therefore will be reviewed on a case-by-case basis by the professional planning staff of the Council.

N.J.A.C. 5:97-5.2(d)

COMMENT: "Whether the lot is in a sewer service area" should be changed to "whether the lot is in an updated sewer service area that meets the requirements of the 2008 DEP Water Quality Management Rules . . ." Currently existing sewer service areas may not meet recently finalized DEP requirements.

RESPONSE: Any up-to-date information or anticipated changes regarding sewer service areas should be submitted to the Council with the municipality's petition. In addition, updated information regarding sewer service areas should be submitted to the Council as it becomes available. The Council intends to work cooperatively with the New Jersey Department of Environmental Protection to enter into a memorandum of understanding in the near future.

N.J.A.C. 5:97-5.2(d)1

COMMENT: What about lands owned by State or county government? These are obviously undevelopable, at least by any action of the municipality, and should be excluded. The Council's vacant land survey has included such lands.

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-5.2(d)4

COMMENT: The assumption that a municipality can only apply steep slope standards if it regulates the steep slopes of non-Mount Laurel sites to the same extent that it regulates the steep slopes of Mount Laurel sites ignores that there are typically fundamental differences between Mount Laurel sites and non-Mount Laurel sites. Typically, developers seek to develop Mount Laurel sites far more intensively than non-Mount Laurel sites. Therefore, there are often compelling reasons why a municipality may not have adopted a steep slope ordinance where the zoning would allow development on the flatter portion of the site and where the natural inclination of the developer would be to use the flatter portion for development.

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-5.2(d)4i

COMMENT: Please add: "and municipalities in conformance with the Highlands Regional Master Plan may exclude sites based on the Highlands Regional Master Plan land use policies, including land use capability map zones, water availability or water deficit situation, sewer capacity, septic capacity-based densities and all standards or ordinances adopted in conformance with the RMP.

RESPONSE: The comment is outside the scope of this rule proposal. However, on September 5, 2008, the Governor signed Executive Order No. 114 addressing the relationship between COAH and the Highlands and has directed COAH and the Highlands to enter into an memorandum of understanding within 60 days.

N.J.A.C. 5:97-5.2(e)

COMMENT: The use of "exclude" and "include" here is unclear, since the terms were not used above. Does it mean that the Council may include additional sites as undevelopable, or include them as developable? Presumably the latter; but subsection (f) below indicates that the Council may also exclude a site due to environmental constraints. The reference to "vacant and non vacant sites" implies that the Council considers all undeveloped and developed land not excluded under subsection (d) fair game for inclusionary development, regardless of the intent of the present owners, condition of existing housing, zoning, etc. Later "the Council may request a letter from the owner of the site indicating the site's availability for inclusionary development." At this point, the Council is perhaps thinking of verifying whether sites included by a municipality do in fact present "realistic opportunities"; but also it may not (request such a letter), that is, it may assign a site as suitable for inclusionary development irrespective of its present state and the owner's intentions. While subsection (h) provides for careful Council consideration of sites, I fear that in the press to assess thousands of lots in hundreds of municipalities, Council staff may paint with a very broad brush. If the Council may include developed land as prospective sites for inclusionary housing, it does not seem possible that a municipality can actually reduce its obligation through this exercise, because the Council can always designate areas of the municipality as suitable for [page=6007] redevelopment, with appropriate affordable housing. It would help if the Council would provide general guidance as to how it plans to assign sites as suitable for inclusionary development.

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-5.2(h)

COMMENT: The stated minimum presumptive density of six units for acre and the maximum presumptive set-aside of 20 percent are inconsistent with the presumptive density and set-aside stated in N.J.A.C. 5:97-5.6 and 6.4.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: The addition of required consideration of both the character of the area surrounding each site and the need for low and moderate income housing in establishing the density and set-aside of sites in a RDP analysis is a welcome amendment, one that merely restores the previous second round rule, and should be adopted.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-5.2(i)

COMMENT: The commenter trusts that this means only that later development of such sites requires that they contribute toward the actual obligation, as reviewed every two years.

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-5.2(k)

COMMENT: The deadline for purchasing active and passive recreational lands of "within one year of substantive certification" is too constrained, particularly given the substantial funding/budgetary constraints that exist at the state and local levels, and lack of control that government entities have over when private property owners decide to sell their land.

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-5.3

COMMENT: Princeton Borough has a Judgment of Repose that contains an unmet need component that continues in full force. N.J.A.C. 5:97-5.3 states that COAH "... may require the municipality to amend or add additional mechanisms ... for an unmet need requirement" Will COAH continue to honor the unmet need provision granted by the

Court?

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-5.4

COMMENT: The commenter agrees that municipalities have an obligation to plan for affordable housing; however, it should not exceed available capacity or sustainability. This amendment requires municipalities to zone to accommodate a projected growth share obligation ignoring the existing natural capacity limitations. This amendment forces municipalities to zone for affordable housing sites in environmentally sensitive locations in spite of decreasing population/employment trends and little available transit opportunities.

RESPONSE: The commenter is mistaken. A durational adjustment will only be provided for sites that can realistically receive the capacity required for the site within the substantive certification period. Capacity does not need to be available at the time of substantive certification. The Council will require sufficient information at the time of petition to determine the site's prospects of receiving infrastructure, and the site's prospects of inclusion in an areawide water quality management plan amendment (including the wastewater management plan, developed in accordance with the rules of the DEP). The requirement to address that portion of the prior round obligation with such site(s) will be deferred until adequate capacity is made available. The commenter should also note that municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, a market-to-affordable program or reconstruction programs.

COMMENT: COAH should require municipalities to seek center designation and planning area amendments if needed to help bring sewer to possible inclusionary development. Any memorandum of understanding with the State Planning Commission should allow for center designation and planning area amendments to construct affordable housing without requiring plan endorsement.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: It is our understanding that in the case of insufficient water and/or sewer, affordable housing sites get priority access infrastructure compared to market rate developments. Please clarify how this is to be accomplished or how an affordable housing site's proximity to water and sewer will be taken into account in determining "availability" and priority of service to affordable housing developments versus market rate developments.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: The phased submission of housing elements and fair share plans by municipalities that address affordable housing obligations within the range of existing and programmed system capacity available to accommodate planned development should be permitted in lieu of the use of durational adjustments as currently proposed. The proposed rule specifies that municipalities must plan for their projected growth share obligation by zoning sites to accommodate affordable housing, regardless of capacity constraints. This provision is in direct conflict with the new Water Quality Management Plan (WQMP) rules. It also results in potentially unrealistic development and investment expectations, and potential litigation, if insurmountable environmental, cost or engineering constraints preclude capacity issues affecting sites subject to durational adjustments from being resolved within the timeframe of substantive certification.

RESPONSE: A durational adjustment will only be provided for sites that can realistically receive the capacity required for the site within the substantive certification period. Capacity does not need to be available at the time of substantive certification. The Council will require sufficient information at the time of petition to determine the site's prospects of receiving infrastructure, and the site's prospects of inclusion in an areawide water quality management plan amendment (including the wastewater management plan, developed in accordance with the rules of the DEP). The requirement to address that portion of the prior round obligation with such site(s) will be deferred until adequate

capacity is made available.

N.J.A.C. 5:97-5.4(h)

COMMENT: COAH should not be compromising the integrity and functions of other State agencies. The public relies on other state agencies to do their jobs. If the State Planning Commission (SPC) says a site meets the criteria for a Planning Area 5 and should be a Planning Area 5, COAH should honor that designation. COAH's advocacy should be limited to expediting applications--not forcing lower standards to be applied to *Mount Laurel* sites. That has never been State policy before and it would profoundly undermine the public trust to eliminate the safeguards that are particularly needed when a developer seeks to develop a site more intensively as is typically the case in a *Mount Laurel* setting.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: The additional sentence would require municipalities to zone for high density inclusionary development where no sewer or water exists. The provision should not be adopted as it is inconsistent with case law that provides sites without water and sewer do not present a realistic opportunity. During the monitoring phase, post substantive certification, COAH has adequate ability to evaluate the realistic opportunity for inclusionary development. This provision would require municipalities to zone for inclusionary development, and then preclude changes in planning and zoning without the consent of the property owner.

RESPONSE: The Council practice with regard to durational adjustments remains unchanged from N.J.A.C. 5:93. The municipality has always been required to zone the site for inclusionary development when a durational adjustment was granted. A durational adjustment will only be provided for sites that can realistically receive the capacity required for the site within the substantive certification period. Capacity does not need to be available at the time of substantive certification. The Council will require sufficient information at the time of petition to determine the site's prospects of receiving infrastructure, and the site's prospects of inclusion in an areawide water quality management plan amendment (including the wastewater management plan, developed in accordance with the rules of the DEP). The requirement to address that portion of the prior round obligation with such site(s) will be deferred until adequate capacity is made available.

[page=6008] **N.J.A.C. 5:97-5.4(i)**

COMMENT: As a result of the adoption of A500, this amendment should not be made. It presupposes that at the time of development approvals there would be inclusionary development or payment in lieu, but with reference to non-residential development that is no longer the case as a result of the change in the statute. A non-residential developer will escape an inclusionary component or payment in lieu by merely paying a 2.5 percent development fee. As a result, if that developer uses up the balance of any infrastructure, there should be a durational adjustment for the growth share obligation.

RESPONSE: The Council does not believe that this rule amendment is in conflict with P.L. 2008, c. 46, which will be the subject of a future rule amendment.

N.J.A.C. 5:97-5.6

COMMENT: There are two problems with these non-residential presumptive densities. First, they do not differentiate between non-residential uses. For example, for sites located within a Planning Area 1 (PA1) the presumptive density is 80 jobs per acre. COAH has assigned these presumptive densities without accounting for land use. The multipliers identified unreasonably assume that all nonresidential development in the various Planning Areas of the State uniformly result in the same number of jobs per acre according to Planning Area, which is unrealistic relative to the various classes and types of nonresidential development that zoning ordinances permit. If a hypothetical site located within a PA1 area is zoned exclusively for storage uses it is unlikely that any proposed development in

conformance with this zoning would even come close to yielding 80 jobs per acre. Therefore, COAH presumptive densities for non-residential sites are arbitrary, capricious and unreasonable. COAH should amend its growth projection adjustment presumptive densities set forth for sites zoned for non-residential uses to account for different non-residential uses acre for warehousing are substantially different from and substantially lower than office uses, for example. Second, they are substantially higher than the jobs projected by COAH in the UCC use groups. For example, COAH's jobs per 1,000 square feet of "office buildings" is 2.8. Thus for a 10,000 square-foot office building in a Planning Area 2 area, typically accommodated on one acre, COAH anticipates 28 jobs contrasted to COAH's presumptive density of 60 jobs. Similarly, other Uniform Construction Code (UCC) use groups generate even lesser numbers of jobs, further exacerbating the differential between presumptive densities and COAH's non-residential growth share figures. It is recommended that non-residential presumptive densities rely upon UCC use group jobs per square feet data and local use zoning for developable non-residential uses, that is, office, mercantile, factories, etc.

RESPONSE: In order to respond to the Appellate Division's concerns in *In the Matter of the Adoption of N.J.A.C.* 5:94 and 5:95, supra, the Council determined that an adjustment to these projections should only be warranted by lack of available land capacity and not by factors that are within the municipality's control, a process similar although not identical to the vacant land adjustment process. Like the vacant land adjustment process, the Council believes that uniform minimum dwelling units and jobs per acre is a reasonable approach. The growth projection adjustment process was intentionally designed to create predictability for all parties, as with the vacant land adjustment. The jobs per acre approach was developed primarily based on a long standing practice by DEP where non-residential densities are based on residential gallons per day which are then converted to gallons per employee. The residential gallons per day is based on the presumptive densities by planning area where sewer service is available and a two ppm nitrate dilution standard in non-sewered areas. In the example given, 10,000 square feet of office space on one acre represents a floor area ratio of only 0.23. This low intensity of use is not in keeping with the smart growth initiatives of compact forms of development and efficient land use for the Planning Area 2 example given. A 21,500-square-foot office on the same acre would generate 60 jobs at 2.8 jobs per 1,000 square feet and reflect an floor area ratio (FAR) of 0.49.

COMMENT: The projections in N.J.A.C. 5:97 Appendix F break down the potential growth share obligation into a residential and non-residential component. However, the adjustment procedure does not permit a municipality to challenge each growth share component separately. For example, a residential growth share projection may be relatively accurate, while the non-residential projection can be substantially higher than what could be realistically accommodated. As a result, a municipality should be able to seek an adjustment to only one component (for example, non-residential growth).

RESPONSE: The Council must analyze both the residential and non-residential projections because an adjustment will only be granted if the affordable housing obligation resulting from the revised projection adjustment is 10 percent less than the resulting affordable housing obligation resulting from the household and employment growth projections provided in Appendix F.

COMMENT: After the first three years, the numbers should be audited and adjusted upward if the municipality underestimated its numbers. This avoids the situation where a municipality plans for an unrealistically high number and then it is left to "undo" zoning or other measures which would undoubtedly trigger even more litigation.

RESPONSE: The Appellate Court, in *In re Adoption of N.J.A.C.* 5:94 and 5:95 by the Council on Affordable Housing, 390 N.J. Super. 1 (App. Div. 2007), certif. den., 192 N.J. 71 (2007), ruled that the growth share methodology, while constitutional, must contain a sufficient check on municipal discretion in adopting zoning. Therefore, the municipality must provide a realistic opportunity for the provision of affordable housing opportunities to address its projected growth, even if actual growth is less than projected growth. Therefore, the municipality must continue to provide for a realistic opportunity for the projected growth share obligation until the end of the third round period. Municipalities are required to construct or otherwise provide affordable housing in proportion with actual residential and non-residential development. If the actual growth share obligation is less than the projected growth share obligation, municipalities will be required to zone or provide other mechanisms permitted by N.J.A.C. 5:97-6 in keeping with their

projections. The actual obligation will be determined based upon what actually occurs and affordable housing production must keep pace with market-rate growth. The commenter should note that municipalities have a myriad of options to satisfy their obligation, including those that do not require inclusionary zoning on vacant land such as accessory apartment programs, market to affordable programs, redevelopment, and municipally sponsored programs. In addition, Council's rules provide flexibility in addressing the affordable housing obligation by providing an option for municipalities to phase certain components of its plan based on feasibility of the proposed mechanisms. In this case, a detailed implementation schedule is required, which includes deadlines for submission of documentation to the Council.

COMMENT: This entire section should be rewritten. It is complicated and unclear, and the amendments make it more so. The provisions are written so that it would appear to be impossible to actually obtain an adjustment of the household and employment growth projections no matter how incorrect they may be. It defeats sound planning to merely say the projections can be accommodated in almost every case if greater density, intensity, greater height, and lesser bulk controls are applied. In taking that position, the Council violates general principles of good planning and promotes sprawl by encouraging, and requiring, higher densities and intensities, as well as greater height, where it is inconsistent with the character of municipalities. There should be no reason why municipalities cannot provide their fair share of affordable housing without being forced to change the character of the community, and COAH should work to that end, not dictate densities and intensities of use.

RESPONSE: The Council does not dictate how a municipality shall zone a site when a growth projection or vacant land adjustment is granted. The minimum units and jobs per acre is a minimum of what that land could sustain if zoned for that purpose at that density. For a growth projection adjustment, the adjusted household and employment growth is then converted to a growth share obligation using the ratios set forth in N.J.A.C. 5:97-2. This process is similar to a vacant land adjustment, where a minimum units per acre is assigned to vacant land to determine the realistic development potential (RDP) of the municipality. However, the municipality is not required to zone these sites for inclusionary development and may address its RDP using any of the other compliance [page=6009] mechanisms provided in N.J.A.C. 5:97-6. Like the vacant land adjustment process, the Council believes that uniform minimum dwelling units and jobs per acre is a reasonable approach. The growth projection adjustment process was intentionally designed to create predictability for all parties, as was the vacant land adjustment. In addition, COAH recently held several technical seminars where the process of requesting a growth projection adjustment was explained. In addition, a worksheet on the growth projection adjustment is now available on COAH's website.

COMMENT: COAH should hesitate to rely on municipal zoning to assign densities, as that zoning may be a product of exclusionary behavior.

RESPONSE: COAH will not utilize the municipality's zoning to assign densities. The Council will only utilize the municipality's zoning to determine whether to assign the residential or non-residential density listed in N.J.A.C. 5:97-5.6(e) to each site remaining in the vacant land inventory.

COMMENT: It is unreasonable to require a municipality seeking an adjustment of its household and/or employment growth projections to assume that it will realize full buildout prior to 2018. To the contrary, since COAH regulations and policies should specifically conform to principles of sound land use planning. Assuming full buildout in association with an adjustment only serves to perpetuate unreasonably high growth projections, and specifically undermines a municipality's ability to demonstrate that actual development in the town will be clearly superior to that utilized by COAH, the agency has an obligation to use the most reliable data available.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: All municipalities in New Jersey have zoning regulations with density standards. Adjustments should be based on the growth that can be reasonably expected under the municipal zone plan. There is no need for the "minimum presumptive densities" proposed by COAH to adjust the municipal population and growth projections, unless State regulation is more restrictive and results in a lower density than permitted by local zoning. COAH should

otherwise defer to the adopted municipal zoning standards in determining the municipal capacity for development on the vacant developable land within the community and the consequent fair share. If COAH does not adjust based on local zoning, then it has abandoned the concept of growth share and is no longer allocating a fair share of affordable housing, but is mandating an arbitrary growth level for market rate housing and commercial development as a means to inflate the local fair share. Moreover, by insisting on the use of "presumptive densities" at higher levels than permitted by the zone plan, COAH is prejudging the municipal zone plan and presuming that the zoning of the municipality is exclusionary.

RESPONSE: In order to respond to the Appellate Division's concerns in *In the Matter of the Adoption of N.J.A.C.* 5:94 and 5:95, supra, the Council determined that an adjustment to these projections should only be warranted by lack of available land capacity and not by factors that are within the municipality's control, a process similar although not identical to the vacant land adjustment process. Like the vacant land adjustment process, the Council believes that uniform minimum dwelling units and jobs per acre is a reasonable approach. The growth projection adjustment process was intentionally designed to create predictability for all parties, as with the vacant land adjustment.

COMMENT: COAH regulations establish a flawed process for determining a municipality's entitlement to its growth share responsibilities. COAH has to decide whether a site is appropriate for residential development or non-residential development in order to have a rational adjustment process for the growth share. However, for each parcel that COAH concludes is suitable for non-residential development and, therefore, unsuitable for residential development, the municipality has increasingly fewer parcels that are available for residential development. Thus, if COAH concluded that all the sites with growth potential were suitable for non-residential and unsuitable for residential, it would put the municipality in the impossible position of having to address a potentially substantial growth share from the non-residential development under circumstances where it would have no land suitable for residential development to address it. In order for any approach to be defensible, COAH can't impose an obligation on a municipality that has no practical way to address it.

RESPONSE: The rule was amended to say that the Council will utilize the municipality's zoning to determine whether to assign the residential or non-residential density to each site remaining in the vacant land inventory.

N.J.A.C. 5:97-5.6 and 6.4

COMMENT: The agency's contention in the Smart Growth Impact statement that the "proposed amendments and new rules are consistent with the New Jersey State Development and Redevelopment Plan" is inaccurate. The minimum presumptive densities contained in these rules are arbitrary and promulgated without justification. These rules provide that land in Planning Area 1 shall have a presumptive minimum density of eight units per acre for residential sites. This presumptive density applies to household projections and affordable housing quotas and also is the required density limitation for inclusionary zoning. The "presumptive density" approach used in these rules utilizes a "one size fits all" model that fails to reflect local conditions and places an urban standard on suburban and rural areas that unjustifiably inflates affordable housing quotas inconsistent with appropriate zoning. This overly simplistic approach to zoning is in direct contravention with the Municipal Land Use Law which requires that a zoning ordinance be drawn "with reasonable consideration to the character of each district and its peculiar suitability for particular uses . . . " N.J.S.A. 40:55D-62. The proposed rules adopt a simplistic standard that fails to recognize diverse and unique local conditions and uses a very high development density of eight units per acre as the appropriate standard for all land in Planning Area 1. There is no explanation for how this standard was selected. The proposed rules would require that the borough ignore its careful planning efforts and presume a minimum appropriate density of eight units per acre for purposes of projections and inclusionary zoning. This approach artificially inflates housing quotas, but more importantly it ignores careful and thoughtful land use planning and ultimately leads to inappropriate development. The presumptive densities are put forth absent any substantive data to validate such projections. The State Planning Commission has not adopted such densities, and if it were to do so, such a plan would have to go through a public hearing and comment process to validate. We ask, therefore, for COAH to explain how these presumed densities are compliant with the State Plan.

RESPONSE: It is not possible to establish Statewide regulations that reflect precise specificity in 566 individual sets of circumstances or even to reflect the differences between different municipalities all located in one type of planning area. However, the Council believes that density standards set forth in the rules are generally consistent with characteristics used to describe the various planning areas included in the State Development and Redevelopment Plan (SDRP). Moreover, the Council's reliance on septic density standards issued by the NJDEP provide further consistency with general state-wide policies on the nature and location of residential development. Eight- and six-unit per acres densities are not an urban standard. Urban standards include densities starting at 22 units per acre and in many cases exceed that number substantially. Eight-unit per acre densities could be achieved in a variety of development profiles ranging from single family homes on 50- by 100-foot lots to attached units that could also result in 60 percent of each acre developed being incorporated into an open space/buffering design element. Notwithstanding, it should be noted that the "presumptive minimum" densities and "presumptive maximum" set-asides referenced in the rule are used for the purpose of establishing realistic opportunities for the construction of affordable housing as part of a municipal petition for substantive certification. As permitted elsewhere in the rule, these maximum and minimum figures can be altered to achieve higher or lower set-asides and/or higher or lower densities subject to demonstration of financial feasibility.

N.J.A.C. 5:97-5.6(b)

COMMENT: Does this mean sites that cannot be required to produce an affordable unit (pursuant to N.J.A.C. 5:97-6.4(b)7) or sites that cannot accommodate a single unit (which cannot be required to be affordable)? In the example, shouldn't the 0.5-acre site be eliminated because it can accommodate only three units and therefore cannot be required to contribute an affordable unit?

[page=6010] RESPONSE: Sites that can accommodate a single market-rate unit may be excluded from the vacant land inventory. The purpose of a growth projection adjustment is to adjust the total amount of market residential and non-residential growth that can be accommodated in the municipality based upon lack of vacant land. A market rate infill unit could therefore still be developed on a small lot, which will add to the municipality's growth share obligation. Residential densities used in the zoning section of the rules will generally be used to determine minimum lot sizes for consideration. For example, if the presumptive minimum density is 8 units per acre, sites smaller than one-eighth of an acre would be eliminated as developable for either residential or non-residential

N.J.A.C. 5:97-5.6(e)

COMMENT: The presumptive densities set forth by COAH are unrealistic and impose an unfair burden on municipalities. The presumptive density set forth for Planning Areas 3, 4 and 5 based upon DEP's Water Quality Management Planning Rules are unclear and confusing. The presumptive densities in urban centers and Planning Areas 1 and 2 are set forth with specific numbers, which is arbitrary when contrasted with the general provisions for Planning Areas 3, 4 and 5.

RESPONSE: Like the vacant land adjustment process of the prior rounds, the Council believes that uniform minimum dwelling units and jobs per acre is a reasonable approach. The growth projection adjustment process was intentionally designed to create predictability for all parties, as with the vacant land adjustment. It is not possible to establish Statewide regulations that reflect precise specificity in 566 individual sets of circumstances or even to reflect the differences between different municipalities all located in one type of planning area. However, the Council believes that density standards set forth in the rules are generally consistent with characteristics used to describe the various planning areas included in the SDRP. Moreover, the Council's reliance on septic density standards issued by the NJDEP provide further consistency with general state-wide policies on the nature and location of residential development. It should be noted that the "presumptive minimum" densities and "presumptive maximum" set-asides referenced in the rule are used for the purpose of establishing realistic opportunities for the construction of affordable housing as part of a municipal petition for substantive certification. As permitted elsewhere in the rule, these maximum and minimum figures can be altered to achieve different set-asides and/or densities subject to demonstration of financial feasibility.

COMMENT: Add the following language: "6. Land outside of an up-to-date sewer service area included in the Highlands Regional Master Plan in the Planning Area shall have a minimum presumptive density that employs the Highlands RMP septic density standards for the Protection Zone, Conservation Zone, Environmentally Constrained Conservation Zone, Environmentally Constrained Existing Community Zone, and the septic capacity allocated by HUC 14 in the RMP."

RESPONSE: Pursuant to Executive Order No. 114 (2008), the Council will consider the Highlands Regional Master Plan in identifying the appropriate densities for municipalities in the Highlands. This will be further detailed in a memorandum of understanding with the Highlands Council in the near future.

COMMENT: COAH must be prepared to apply densities in excess of its presumptive minimum densities in order to maximize the potential of available land. The densities should increase based on the character of the area, the presence of infrastructure and the need for affordable housing. If the character of the area can support three-story development, the density COAH applies to the site should encourage three-story development. Similarly, if the character of the area can support four-story development, the density must encourage four-story development. The density applied should be the maximum that COAH's planners can apply within the framework of sound planning.

RESPONSE: The Council concurs with the commenter. The Council may apply a density in excess of its presumptive minimum densities to particular sites in the vacant land inventory. The Council will consider the character of the area surrounding each site in establishing that density and will also rely on the appropriate regulating agency's regulations regarding development capacity of the site, including the density.

COMMENT: The elimination of the presumptive density of six units per acre for residential sites and 45 jobs per acre for nonresidential sites is appropriate. The replacement language is not appropriate, and should not be adopted. Assigning specific densities and intensities of use is inconsistent with the concept contained within the body of the provision of the regulation that COAH will consider the character of the area surrounding each site in establishing densities. The addition would mandate specific densities, whether or not they are appropriate or consistent with the character of the area surrounding each site. The use of the word "shall" makes the provision mandatory, and undermines the more flexible planning concept contained in the existing language of the regulation, as well as undermines sound, comprehensive planning.

RESPONSE: As in the vacant land adjustment process, the presumptive density and jobs per acre is a minimum number that will be assigned to the vacant parcel. As with the vacant land adjustment process, the Council may also consider a higher density than the presumptive densities set forth in the regulation. In this instance, the Council will consider the character of the area surrounding each site in establishing that density and will also rely on the appropriate regulating agency's regulations regarding development capacity of the site, including the density.

COMMENT: Proposed N.J.A.C. 5:97-5.6(e) states that COAH will assign minimum presumptive densities and jobs per acre to sites in a municipality's vacant land inventory based on the location of these sites in State Planning Areas and designated centers. Because there are no Planning Areas within the Pinelands Area, it is unclear whether or how COAH can assign densities to sites in the Pinelands Area. The Commission would ask that COAH clarify how it intends to address sites in the Pinelands Area, whether it is by assigning minimum presumptive densities or relying on the Pinelands Comprehensive Management Plan, as seems to also be implied in proposed N.J.A.C. 5:97-5.6(e). If COAH intends to assign densities, it is important that this be done for lands outside sewer service areas in a manner consistent with the water quality standards of the Pinelands Comprehensive Management Plan, not merely in reliance on DEP's Water Quality Management Planning rules as proposed N.J.A.C. 5:97-5.6(e)5 indicates.

RESPONSE: The Council will consider the Pinelands Comprehensive Management Plan in identifying the appropriate densities for municipalities in the Pinelands. This will be further detailed in an updated memorandum of understanding with the Pinelands Commission in the near future.

N.J.A.C. 5:97-5.6(e)5

COMMENT: Isn't minimum presumptive density also according to the DEP Water Quality Management Planning Rules, a maximum density? Will permanently preserved land be excluded in the calculation of minimum presumptive density? What about land within the HUC-11 which has sewer service? How long will it take the Council to calculate and publish these densities?

RESPONSE: The Council will generally not accept densities that exceed DEP's Water Quality Management Planning rules (N.J.A.C. 7:15) 2.0 mg/L nitrate dilution standards in areas outside of a sewer service area in Planning Areas 3, 4 and 5. The densities published by DEP do include environmentally sensitive land in the calculation of the densities for that HUC-11. However, COAH bases the presumptive density on the gross area of the site minus any environmental constraints. Vacant land inside a sewer service area would be assigned the minimum densities according to its planning area or center designation pursuant to N.J.A.C. 5:97-5.6(e). The HUC-11 densities for areas outside of sewer service areas are available on COAH's website. DEP does include constrained lands as contributing to the ability of land to accommodate septic discharge.

N.J.A.C. 5:97-5.7

COMMENT: N.J.A.C. 5:93-4 used the term "unmet need" to define the portion of the housing obligation that could not be addressed based on the capacity of municipal vacant land. The rule required affirmative municipal actions with the goal of addressing the entire 1987-1999 housing obligation. N.J.A.C. 5:97-5.6 and 5.7 do not use the term unmet need; nor do they require a municipality to address the entire 1999-2018 housing obligation. COAH must require a municipality seeking a vacant land adjustment to promote redevelopment with the goal of addressing [page=6011] the entire 1999-2018 housing obligation. This is particularly important since COAH has allocated an additional 6,590 units to municipalities in which COAH has already determined that land is a scarce resource and another 24,363 units to New Jersey's distressed cities. It makes no sense to allocate housing need to municipalities in which land is a scarce resource unless COAH is prepared to require the affirmative measures necessary to address the entire housing obligation. If COAH is not prepared to require such affirmative measures, the remaining housing obligation must be reallocated to other municipalities that have adequate vacant land capacity

RESPONSE: The Council encourages reuse and redevelopment of existing buildings and land and encourages municipalities to cooperate with developers in granting reasonable variances and waivers to promote inclusionary redevelopment. However, the Council does not dictate how a municipality must address its affordable housing obligation. Municipalities have a myriad of options to satisfy their obligation, including those that do not require new construction such as accessory apartment programs, a market-to-affordable program or reconstruction programs. The rules also contain a new section on redevelopment which has been added to capture the unique circumstances surrounding redevelopment that occurs specifically under the auspices of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. In response to potential growth share opportunities, the Council may require one or any combination of the mechanisms listed in N.J.A.C. 5:97-5.7 as a condition for granting the growth projection adjustment, including capturing affordable housing in a redevelopment area. However, this analysis is done on a case by case basis by the Council.

N.J.A.C. 5:97-5.7 and 6.4

COMMENT: COAH must understand that creating a realistic opportunity for affordable housing on existing developed sites is much more problematic than on vacant sites. COAH should provide a preference for vacant sites over previously developed sites, unless there is an agreement with a developer or a designated redeveloper to redevelop a previously developed site. The zoning on a previously developed site must create an incentive to demolish existing structures, cart off debris, remediate contamination and construct affordable housing.

RESPONSE: The Council understands the development cost differences between development on vacant land and

redevelopment of existing and infill sites. When municipalities evaluate density increases necessary to support affordable housing, other public policy initiatives must also be considered. For example, if the designation of a site as one in need of redevelopment pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., were to be used as a tool to accomplish both site remediation and affordable housing policy initiatives, density increases or reduced set-asides (that is, lower than 25 percent) may have to be incorporated to ensure the financial feasibility of pursuing both initiatives.

N.J.A.C. 5:97-5.7(h)

COMMENT: How specifically will COAH allow municipalities to "take into account" presumptive density conflicts with the character of the surrounding area?

RESPONSE: As in the vacant land adjustment process, the presumptive density and jobs per acre is a minimum number that will be assigned to the vacant parcel. As with the vacant land adjustment process, the Council may also consider a higher density than the presumptive densities set forth in the regulation. In this instance, the Council will consider the character of the area surrounding each site in establishing that density and will also rely on the appropriate regulating agency's regulations regarding development capacity of the site, including the density.

COMMENT: Is the presumptive density for a site based on the entire site area, or is it based on the site area minus the area of environmental constraints? In other words, would a residentially zoned 10-acre site located in a Planning Area 1 within a sewer service area, having a realistic development potential (RDP) of eight residential units per acre that generates 80 units (8 units/acre x 10 acres) for the site or 40 (10 acres minus 5 constrained acres = 5 developable acres x 8 units/acre) units for the site?

RESPONSE: The presumptive density is assigned to the site minus the environmental constraints. In the commenter's example, the presumptive density would be a net density applied against the unconstrained developable acreage.

N.J.A.C. 5:97-5.8

COMMENT: The relationship to more than 5,000 certificates of occupancy in the past 10 years is illogical; suppose a municipality had thereby filled up all its vacant land, and therefore no longer had the capability to generate more housing units suggested by this prior activity? If "all credits and associated bonuses pursuant to N.J.A.C. 5:97-4" includes affordable units (and associated bonuses) created and occupied after December 20, 2004, the 1,000-unit limitation becomes almost meaningless, since each affordable unit created under N.J.A.C. 5:97-4.3(a) over the next 10 years is subtracted from the projected growth share obligation. The subtraction of credits and bonuses should apply only to credits and bonuses earned prior to December 20, 2004.

RESPONSE: The Council believes that rule is consistent with the FHA at N.J.S.A. 52:27D-307e and *In the Matter of the Application of the Township of Jackson*, 350 *N.J. Super*. 369 (App. Div. 2002). A municipality that seeks a 1,000-unit limitation shall first subtract from its projected growth share obligation all credits and associated bonuses at the time of petition that are proposed to address the growth share obligation to determine if the municipality is eligible for the one-thousand unit.

COMMENT: COAH does not have the authority to impose an entire fair share on a municipality beyond 1,000 unless it is likely that the municipality could create a realistic opportunity for more than 1,000 units within 10 years from the grant of substantive certification. The proposed regulation, consistent with the FHA language, applies to the municipality's entire fair share. However, various responses to published in conjunction with the regulations it adopted on May 6, 2008 suggest that COAH would apply the 1,000-unit cap only to the growth share obligation. The commenter presumes that, in accordance with the plain language of proposed N.J.A.C. 5:97-5.8 and the plain language of the FHA from which COAH derives all its powers, the proposed regulations are intended to apply the 1,000-unit cap to the entire

fair share--not any component of the fair share. If that is not the case, COAH needs to clarify and justify its departure from the FHA.

RESPONSE: The 1,000-unit limitation in N.J.A.C. 5:97-5.8 applies to the growth share obligation. The Council will reevaluate separately any 1,000-unit limitation a municipality was granted previously (or for which it is eligible) toward its prior round obligation.

COMMENT: Sixteen municipalities have projected growth shares of above 1,000 units. The total number of units in excess of 1,000 units from these 16 municipalities is 7,992. Eliminating this need is another massive dilution of the constitutional obligation, eight percent of the total need allocated. COAH should allocate these units to other municipalities within the same housing region.

RESPONSE: The Council believes that rule is consistent with the FHA at N.J.S.A. 52:27D-307e. The FHA does not contain a provision for reallocation of the remaining obligation. Further, the commenter should note that a municipality that seeks a 1,000-unit limitation shall first subtract from its projected growth share obligation all credits and associated bonuses at the time of petition that are proposed to address the growth share obligation to determine if the municipality is eligible for the 1,000-unit limitation.

COMMENT: The commenter feels this rule should be deleted, as it dilutes the obligation and the means to address it, and it is arbitrary. *Mount Laurel II* spoke to change in character of the community. Yet, if towns have grown in the past years and consumed land for non-*Mount Laurel* uses, why should low and moderate income families always be stuck with the short end of things, though caps, limitations, restrictions, and other dilutions? Let towns ask for reductions on a case by case basis if their obligations exceed 1,000 units. In the alternative, any change in number downward to a cap should assign the burden of proof on the town to show that the projected number should be decreased. The rule is nebulous as to who bears the burden. The range of evidence should be expanded to include past conduct and a track record to actually produce affordable housing.

[page=6012] RESPONSE: The Council is responsible for implementing the Fair Housing Act and believes that the rule is consistent with the FHA at N.J.S.A. 52:27D-307e, which allows the Council, in its discretion, to place a limit upon the aggregate number of units which may be allocated to a municipality as its fair share of the region's present and prospective need for low and moderate income housing. The FHA states that no municipality shall be required to address a fair share beyond 1,000 units within 10 years from the grant of substantive certification, unless it is demonstrated, following objection by an interested party and an evidentiary hearing, based upon the facts and circumstances of the affected municipality that it is likely that the municipality through its zoning powers could create a realistic opportunity for more than 1,000 low and moderate income units within that 10-year period.

N.J.A.C. 5:97-5.8(b), (c) and (d)

COMMENT: These rules are in conflict with the Fair Housing Act regarding application of the 1,000-unit limitation. The language of the Fair Housing Act is explicit--that is, no municipality shall be required to provide more than 1,000 COAH units during a 10-year period unless it is proven that the community issued more than 5,000 residential certificates of occupancy in the 10-year period preceding the petition for substantive certification. These rules contain exceptions to the application of the 1,000-unit cap that are in conflict with the explicit exception provided in the Fair Housing Act.

RESPONSE: The Council believes that rule is consistent with the FHA at N.J.S.A. 52:27D-307e and *In the Matter of the Application of the Township of Jackson*, 350 *N.J. Super*. 369 (App. Div. 2002). A municipality that seeks a 1,000-unit limitation shall first subtract from its projected growth share obligation all credits and associated bonuses at the time of petition that are proposed to address the growth share obligation to determine if the municipality is eligible for the 1,000-unit limitation.

N.J.A.C. 5:97-6.2

COMMENT: At 40 N.J.R. 2770, COAH indicates that its decision to maintain the funding requirement for a rehabilitation program at \$ 10,000 was based on a study of municipal rehabilitation programs. But these municipal rehabilitation programs were structured around COAH's requirement to spend an average of \$ 10,000. COAH's requirement encourages municipalities to select substandard housing units that require less work. Anyone with experience in bringing substandard units up to code knows the cost should be over \$ 20,000. COAH should publish the data associated with the county programs that rehabilitate substandard housing occupied by low and moderate income households.

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-6.2(a)

COMMENT: The addition to the adopted language should not be made. It would allow a municipality or an objector to request modification of the rehabilitation share. The rehabilitation share is essentially self-regulating, since if the rehabilitation share is too high, a municipality will never be able to achieve satisfaction of the number even though it may make its best efforts to satisfy that number. On the other hand, to suggest objectors can conduct an exterior housing survey, and seek to increase the rehabilitation share, would seem to create unnecessary judicial wrangling before the Council. The rehabilitation share is predicated upon indicators contained in the census, and should be left as such.

RESPONSE: The provision for an objector to conduct an independent housing conditions survey has been carried forward from the second round and original third round rules. COAH has always provided for a municipality or for an interested party to submit more site-specific and more current information than available through the Census and does not believe that this practice constitutes "judicial wrangling."

N.J.A.C. 5:97-6.2(b)7

COMMENT: This provision recognizes that new construction credits may be used to address a municipal rehabilitation share. This concept was invented by the Council in the rules adopted in 2004. However, the amendment should be expanded to provide that the new construction credit may be used to address municipal rehabilitation share, only if it also includes a removal of the deficient unit. Otherwise, the deficient unit remains, and will continue to be counted in the next round of affordable housing as a rehabilitation need. The only purpose to be served by this amendment is to allow developers to propose inclusionary projects with low and moderate income housing which exceeds the new construction obligation of the municipality. Such over development should not be permitted unless the rehabilitation share unit is removed, rehabilitated, or rebuilt. In that event, the Council should also allow a preference for the occupant of the deficient unit that is to be replaced.

RESPONSE: This is not a new provision and has been permitted by the Council's rules since the second round. The municipality, at its discretion, may use new construction credits to address the municipal rehabilitation share; it is not the developer's option. Units that receive rehabilitation credit are exempt from affirmative marketing requirements.

N.J.A.C. 5:97-6.2(g)

COMMENT: It is fair to allow urban aid municipalities to meet less than their full rehabilitation share if they can show it is not feasible. We feel that it is incumbent on COAH to establish and maintain a high standard with respect to how lack of feasibility is established.

RESPONSE: COAH has an established waiver procedures which municipalities may use to gain relief from a strict interpretation of the rules. As set forth in N.J.A.C. 5:96-15, the party requesting the waiver must show that the strict

application of the rule would create an unnecessary financial, environmental or other hardship.

COMMENT: The waiver from addressing the entire rehabilitation component means that thousands of units of rehabilitation need will simply vanish. In the past, the fact that rehabilitation numbers in urban aid municipalities were too high to be feasibly met was dealt with by reallocating part of present need. Now, COAH is just eliminating that present need instead of finding a way to meet it. The Appellate Division's discussion of reallocated present need assumed that present need would be met. Now that COAH is not planning on actually meeting present need, it is constitutionally required to reallocate part of that present need so that the full need is met.

RESPONSE: COAH's rules have always provided for a waiver of its rules when a municipality could demonstrate a hardship in meeting COAH's rule requirements. In fact, under prior rounds of COAH's rules, municipalities were able to lower the indigenous need component (generally meet through rehabilitation of older, substandard units) of their fair share obligation, through various means of demonstrating that the such need could not be met by the municipality. Such a reduction of the prior round rehabilitation share, however, did not result in a direct increase of another municipality's reallocated present need. Moreover, it should be noted that the Appellate Division (*In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95, supra*, at 56) has previously upheld COAH's decision not include a reallocated present need component as part of its growth share approach, noting that reallocated present need was inconsistent with a growth share methodology.

COMMENT: It makes sense to allow a municipality with a large rehabilitation share to seek a waiver of a requirement to rehabilitate all units within a 10-year period, however, you need to define what you mean by "hardship." In the land use context, the hardship must relate to the particular property in question. Here, it would seem to mean not only a hardship with relation the property, but economic hardship, and perhaps other types of hardship. Please explain what you mean by the term.

RESPONSE: COAH's regulations at N.J.A.C. 5:96-15.2(a) describe the types of hardships and criteria for which a municipality may request a waiver of COAH's regulations.

N.J.A.C. 5:97-6.4

COMMENT: In order to develop economically viable inclusionary developments in less affluent areas, COAH must develop different requirements for pricing affordable units. The revised affordability requirements should recognize that inclusionary developments in these areas accrue greater losses because of the difficulties in marketing the higher priced moderate income units. These greater losses make it even more difficult to subsidize the units that must be affordable to low income households. This reality requires a tighter range of affordability. NJBA proposes a lower maximum sales price for moderate income units and a higher maximum sales price for low income units.

[page=6013] RESPONSE: Unit pricing is determined under the Uniform Housing Affordability Controls (UHAC) codified at N.J.A.C. 5:80-26 and is therefore outside the scope of the rule proposal.

COMMENT: It is absolutely essential that COAH adopt minimum densities that address the building realities of 2008, not 1986. The supply of developable and vacant land has decreased markedly over the past 20 years. As COAH's own projections demonstrate, the demand for housing and affordable housing has not decreased. With demand exceeding supply, the land that is a prerequisite for affordable housing is much more scarce and expensive than 20 years ago. In addition, labor and construction costs have increased and the regulatory environment has become much more difficult. COAH's proposed minimum densities are timid and do not respond to the realities of trying to build affordable housing in New Jersey in 2008. The extremely low minimum densities are of particular concern because experience with COAH indicates that it will use its proposed minimum densities as maximums. COAH must increase its minimum densities based on the need for affordable housing, the existence of public infrastructure and community character. COAH must recognize that, in much of the State, it is appropriate to encourage three-story and even four-story development. Thus, densities of 15 to 25 units per acre and higher are possible in many areas that have the necessary

sewer and water infrastructure. COAH must examine the area surrounding sites carefully and require densities that use land efficiently and maximize the production of affordable housing in the areas designated for growth.

RESPONSE: The Council believes that its use of presumptive minimum densities, which are predicated upon the underlying planning principles associated with Planning Areas established in the SDRP, reflect the commenter's concern. Additionally, it should be noted that, in recognition of the diverse market conditions found throughout the State, municipalities should consider densities and set-asides that reflect local conditions and maximize opportunities. In considering local conditions, municipalities should evaluate land, labor and materials costs as well as the extent to which density increases are provided and set-asides are required.

COMMENT: The minimum presumptive density for inclusionary developments outside of sewer service areas and Planning Areas 3, 4 and 5 has a density increase of 40 percent over the existing zoning. An increased density of 40 percent over the existing zoning is unrealistic in rural areas. The commenter has concerns about the inability to develop subdivision plans that will meet the New Jersey Department of Environmental Protection's (NJDEP) environmental standards, given the presumptive densities and set-asides for inclusionary development that have been proposed by COAH. The recently approved amendments to the Water Quality Management Planning Rules by the NJDEP that will now regulate residential projects with six or more septic systems, will make it impossible to conform to COAH. In the South Jersey area, residential developments must be sited on septic systems because of the NJDEP's unwillingness to extend service to these areas. Under the recently adopted WQMP rules of July 7, 2008, a typical residential lot will now require five to 10 acres depending on the soil type and land use coverage code. Even without the COAH obligation, the costs to develop a property at such a low density will make it impossible for a project to be economically feasible. If COAH wants to ensure inclusionary developments, densities and set-asides will have to reflect densities and set-asides that can subsidize affordable housing in the different regions of the State.

RESPONSE: The rule establishes a density increase of 40 percent as a minimum standard for establishing financial feasibility for inclusionary zoning in areas not serviced by public sewerage treatment facilities. While the NJDEP nitrate dilution standards are generally expressed in terms of acre per unit densities, they are not applied at the lot level. Rather, they are applied at the HUC 11 level. Additionally, some municipalities have adopted zoning that requires lot sizes that exceed the standards set by NJDEP. Consequently, it is possible to grant both a density increase and allow smaller lots in some areas without exceeding maximum thresholds set by NJDEP. The Council's rule requiring the use of clustering and lot size averaging reflects these possibilities. However, in areas where development that results from increased densities can not be approved in accordance with the NJDEP standards, the Council will not accept inclusionary zoning as a viable mechanism to provide a realistic opportunity for the construction of affordable housing. Consequently, municipalities should carefully consider the practical viability of applying inclusionary zoning in areas that rely on septic systems for wastewater disposal.

COMMENT: Imposing 20 percent set-asides for high density housing in Urban Centers will discourage development in our cities due to the high cost of construction of the mid-rise housing product, and the substantial site remediation expenses which are customarily encountered when redeveloping industrial sites. Urban construction costs are often more than four times the cost of stick-framed suburban construction, and, therefore, the losses builders incur in constructing affordable homes are considerably more substantial. Revenues from affordable homes in mid-rise and high-rise construction are also negatively impacted, as builders need to account for higher monthly association fees when calculating the restricted sales prices.

RESPONSE: The presumptive densities and set-asides included in the Council's proposal reflect general conditions noted throughout the State. In specific instances where a developer can demonstrate that the densities and set-asides proposed by a municipality do not provide adequate cost offsets to justify a required set-aside, the developer may wish to consider seeking additional density, a lower set-aside based on economic feasibility, and/or assistance in defraying development costs. In redevelopment projects, assistance with site remediation expenses may also be available through DEP.

COMMENT: For towns that will accrue most of their growth share obligation from projects that were approved prior to the publication of COAH's third round rules and their amendments, compliance with the rules in a manner that will not require public financing will dramatically affect the character of the towns and their ability to follow their own Master Plans and zoning ordinances. Wall Township's 667-unit obligation is too large to meet with a 10-unit write-down/buy-down program or a 10-unit accessory apartments ordinance. Nor is the Township able, as a practical matter, to address such a substantial fair share through inclusionary zoning. Indeed, using the 25 percent set-aside for Sites in Planning Areas 1 and 2, the Township would have to zone for 11,116 units to net 667 units. This is because, with a 100-unit project developed with a 25 percent set-aside, only six units can be netted to apply against the growth share responsibilities of the community generated by development outside the project. That is because the 75 market units itself generates a growth share of roughly 19 units. No rational municipality would rely on such a colossally inefficient technique. Indeed, historically, 20 percent set-asides are so inefficient that municipalities typically have relied on this technique as little as possible. COAH's proposed regulations will magnify the inefficiency of inclusionary zoning more than three-fold. As a result of the above, Wall will have to rely upon "municipally sponsored projects." That is the only way, as a practical matter, for this community to meet such a substantial fair share. Due to the limited funding pots for such projects, and the competition that will ensue as a result of the adoption of these rules, the Township will have to bear much of the cost of 100 percent affordable projects. In this regard, developers expert in securing the financing for 100 percent affordable projects have relied primarily upon nine percent tax credits and a subsidy from the Balanced Housing program. That is the primary way, historically, for these developers to finance their projects without needing substantial subsidies from the municipality. In prior housing cycles, it has been extremely competitive for municipalities to secure nine percent credits. If COAH adopts the proposed regulations and if there are no further changes in the law, the level of competition will rise dramatically because towns will have no choice, as a practical matter, but to increase their reliance on municipally sponsored projects. The impact of all this is predictable--the vast majority of applicants will not be successful in securing financing, forcing municipalities to cover the gap in financing. By forcing municipalities to spend their own money to comply, which is what occurs when a municipality adopts a resolution of intent to bond if necessary to fill the gap in financing for a municipally-sponsored development, property taxes will increase to no end. The property tax burden will become unbearable on our low and moderate households and on our working-class residents, and they will be displaced. Indeed, any low or moderate household not living in a deed [page=6014] restricted unit may be forced out by the increased cost of living in the community.

RESPONSE: Accessory apartment programs and market to affordable programs may each be used to address the greater of up to 10 units or 10 percent of a municipality's fair share obligation. Successful programs will be permitted to expand further upon demonstration of success. The example given by the commenter erroneously assumes that growth within inclusionary developments would be in addition to growth that would occur if no inclusionary zoning were adopted. It should be noted that the Council's proposal makes it clear that both affordable units and market-rate units are included within the growth projections used to determine the growth share obligation.

COMMENT: The proposed presumptive 25 percent set-asides will have a serious detrimental economic impact on the construction of affordable housing. Not only will builders suffer losses on the additional affordable homes required to be built, but the prices for an increased number of market homes in these inclusionary developments will need to be discounted as well. For more than 20 years, New Jersey builders have successfully constructed inclusionary developments with the presumptive densities and lower set-asides required under the First and second round rules. There is no comparable experience for the economic feasibility and marketability of constructing communities with these higher set-asides, nor are we aware of any reports or fiscal analyses reviewed by COAH which support the 25 percent set-aside. The courts have studied the issue of set-aside and determined that the maximum set-aside for affordable housing offered for sale should be 20 percent.

RESPONSE: The report, "Inclusionary Housing: Lessons from the National Experience," included in chapter Appendix F looks at nationwide programs designed to encourage affordable housing production through the use of density bonuses. Set-aside ratios noted in the report range from five to 35 percent, including a 25 percent set-aside

requirement under the Massachusetts Chapter 40B law. Additionally, the Council's staff reviewed inclusionary zoning that was used in New Jersey to address prior round obligations for the period 1987 through 1999. The inclusionary developments used to address prior round obligations included set-asides of greater than 20 percent, and the range of set-asides in developments that had actually been completed was from one to 83 percent. In some instances, lower set-asides appeared to reflect a specific number of units to address the prior round number without regard for the percentage of affordable units within the development. Out of 533 inclusionary developments included in second round fair share plans, 153 provided set-asides that exceeded 20 percent and 58 provided set-asides that exceeded 25 percent. The Council recognizes that a 25 percent set-aside may not always be economically feasible for homeownership projects and developers and municipalities will have the opportunity to demonstrate that a lower set-aside may be necessary to make a project economically viable. Further, the commenter should note that P.L. 2008, c. 46, which includes consideration of the economic feasibility of inclusionary developments, will be the subject of a future rule amendment.

COMMENT: Land is a scarce resource in the Meadowlands. COAH should ensure that the land within the Meadowlands is used to the maximum density permitted by sound land use planning in order to maximize the potential for affordable housing. It should be guided by the densities approved by Judge Harris and other high density approvals granted by the Meadowlands Commission. In many areas within the Meadowlands, the minimum density of 22 units per acre COAH has proposed in Planning Area 1 is trivial and unacceptable. It is absolutely crucial to maximize affordable housing in the Meadowlands. This is an area in which the State has invested in the infrastructure necessary to support growth. Mid-rise and high rise development are common in the District. Superior Court Judge Harris recognized as much in rendering his *Tomu* decision (*Tomu Development Co., Inc. v. Borough of Carlsadt*, Dkt. No. BER-L-5895-03 (Law Div. 2005). In *Tomu*, Judge Harris ordered a builder's remedy of 100 units per acre, which he found to be the average density of two other residential approvals granted by the Meadowlands Commission. Early in 2008, Judge Harris ordered another "builder's remedy" in a section of Little Ferry just outside the Meadowlands District. The density of the Little Ferry "builder's remedy" is 76 units per acre.

RESPONSE: The rule sets forth minimum standards at a general Statewide level. The Council recognizes that there are circumstances in the Meadowlands District as well as elsewhere in the State where higher densities are suggested by sound land use planning. The Council anticipates that municipalities and regional planning entities will act accordingly. Specific to the New Jersey Meadowlands Commission (NJMC), the Council will enter into memorandum of understanding to ensure that the planning goals of both COAH and the NJMC will be advanced through regulations and policies adopted by the NJMC.

COMMENT: The Council is requiring (in inclusionary developments) that the density be increased. The power for a municipality to zone is vested in N.J.S.A. 40:55D-62. The Municipal Land Use Law (MLUL) states that the zoning ordinance shall be drawn with reasonable consideration to the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate use of land. The regulations in the zoning ordinance shall be uniform throughout each district for each class or kind of buildings or other structure or uses of land. The Council is proposing to override a municipality's power to zone and the increase in density may be in conflict with the MLUL as the Council mandated increase in density may not be reasonable in consideration of the character of the zone district and its peculiar suitability for particular uses and may not be the most appropriate use of land. The increase in density may also conflict with the functions of zoning as specified in the MLUL.

RESPONSE: Density increases and the standards set forth in the Council's rules for presumptive densities and set-asides apply only to inclusionary sites that are designated as such by each municipality. The Council believes that municipalities properly utilize the powers conferred upon them by the MLUL to ensure that all zoning, including zoning for affordable housing, gives due consideration to appropriate land use. Additionally, the Council reviews site suitability pursuant to proposed N.J.A.C. 5:97-3.13.

COMMENT: The commenter feels the 25 percent set aside is arbitrary and inquires as to the specific justification for this set aside. Developers blanche at a 25 percent set aside. It deviates from the 25-year-old 20 percent set aside

without any justification or support in the development community. A far better guide would be to consider the highest development density in the community (either on the books or on the ground, actually built) and use the higher of that number or the COAH rules number as the presumptive minimum. Also, the rule should suggest the kinds of proof to alter the presumption, and should state on whom is the burden of proof is assigned. Also, the rule directing a presumptive density should cover Planning Areas 3, 4, and 5 that have sewer service or access to reasonable sewer service. With respect to paragraph (b)10, what is meant by the reference to N.J.A.C. 5:94 and 5:95? For example, if a residential development was approved in that period but the town did not impose a set aside or development fee because it had no ordinances in place, the town cannot reach back and impose an affordable housing obligation. The commenter guesses it means that if the town had an ordinance that accorded with N.J.A.C. 5:94 and 5:95 and imposed it via ordinance, the development is considered inclusionary, even if standards had changed. If so, the rule should allow it to include those inclusionary or contributory developments approved by Court orders in court towns, even where there was a deviation from the strict standards of N.J.A.C. 5:94 and 5:95.

RESPONSE: The Council has adopted new standards that couple higher set-asides with presumptive minimum densities in an effort to more directly reflect the level of need for affordable housing. The presumptive density in Planning Areas 3, 4, and 5 that have sewer service are set at four units per acre in N.J.A.C. 5:97-6.4(b)2iv. It is important to note that the standards included in the rule are minimum presumptive standards and that COAH would also consider surrounding densities in evaluating and approving inclusionary zoning. At the time of petition, when a municipality has proposed inclusionary zoning that relies on densities and/or set-asides that differ from the presumptive standards used by the Council, the municipality must demonstrate the economic feasibility of the proposal. Subsequent to petition, objectors to the municipal proposal would be given an opportunity to refute municipal contentions during the COAH mediation process. There is no reference to N.J.A.C. 5:94 or 5:95 in N.J.A.C. 5:97-6.4(b)10 or anywhere in N.J.A.C. [page=6015] 5:97-6.4 as proposed. Deviations permitted by court order have historically been widely divergent in extent and must therefore be evaluated on a case-by-case basis.

COMMENT: COAH's revised third round rules create a regulatory scheme that encourages municipalities who cannot rely upon inclusionary zoning to rely upon 100 percent affordable projects to meet its fair share obligation--this in effect forecloses compliance, rather than fosters it. Two other commonly used mechanisms, accessory apartments and market to affordable, are limited in the extent they may be used by a municipality and the latter is very expensive. Furthermore, an additional mechanism, extension of expiring controls, is not available in all municipalities. By forcing municipalities to spend their own money to comply, which is what occurs when a municipality adopts a resolution of intent to bond if necessary to fill the gap in financing for a municipally-sponsored development, property taxes will go up to no end, and the impact upon the poor will be even worse, as the more taxes are raised, the more municipalities force out low- and moderate-income households that do not live in deed-restricted homes and middle-income households, as these classes cannot bear the burden of a substantial increase in property taxes.

RESPONSE: Accessory apartment programs and market to affordable programs may be each be used to address the greater of up to 10 units or 10 percent of the municipality's fair share obligation. Successful programs will be permitted to expand upon demonstration of success. Municipalities generally do have an ability to consider the use of inclusionary zoning as a tool to address affordable housing needs. Even in rural municipalities, where sewer and water service may be limited or non-existent, some level of inclusionary zoning may be possible. Additionally, N.J.A.C. 5:97-5.6 provides for a mechanism to adjust growth projections downward based on land availability that also reflects lower land use capacities associated with the revised NJDEP regulations. Finally, there are other mechanisms available to provide affordable housing opportunities as outlined in N.J.A.C. 5:97-6.6 through 6.15.

COMMENT: A municipality that provides the option for an in lieu fee is responsible for finding an efficient use for it. As the Appellate Division re-established, the low and moderate income housing obligation is a municipal obligation. A municipality that chooses to provide an option for an in lieu fee is responsible for producing affordable housing. The private sector should not be required to pay more because the municipality has not used its resources efficiently to produce affordable housing.

RESPONSE: There have been no revisions to the payment in lieu amounts set forth in the Council's previously adopted rules. The comment is therefore outside the scope of the current proposal.

COMMENT: This proposal will effectively eliminate inclusionary residential development as a compliance mechanism. The proposal would bar municipalities from establishing a Growth Share obligation or requiring a payment in lieu of housing, unless a residential development has minimum densities of eight units per acre in urban areas, six units per acre in suburban areas, and four units per acre in rural areas with sewer. The problem here is that if municipalities choose to increase densities to use inclusionary zoning for compliance, the increased density itself increases the Growth Share obligation. The permitted set aside will only marginally exceed the increased obligation created by the development. Inclusionary residential zoning can no longer be used to satisfy any prior round obligation, retroactive Growth Share obligation, prospective non-residential Growth Share obligation, or any prospective residential Growth Share obligation at densities less than specified. That leaves only municipal construction as the compliance mechanism for the balance of the obligation.

RESPONSE: The presumptive minimum densities and presumptive maximum set-asides referenced in the rule are used for the purpose of establishing realistic opportunities for the construction of affordable housing as part of a municipal petition for substantive certification. These maximum and minimum figures may be altered to achieve higher or lower set-asides and/or higher or lower densities subject to demonstration of financial feasibility and prudent land use. It is not the intent of the regulation to discourage inclusionary developments. The Council appreciates the commenter's suggestions. P.L. 2008, c. 46 includes provisions regarding the economic feasibility of inclusionary developments, including appropriate set-asides, and will be the subject of a future rule amendment.

COMMENT: Why did COAH remove the reduced benefits for payments-in-lieu? Such reduced benefits were supported by Nicholas Brunick's report and are sound public policy. It is much more certain to produce affordable housing, and promotes COAH's stated goal of mixing in affordable units throughout a development, to include units within a development as opposed to an off-site payment-in-lieu.

RESPONSE: While the rule was originally written to encourage on-site production, comments to the previous rule helped the Council recognize that many municipalities were relying on payments in lieu to finance municipally sponsored developments elsewhere in the municipality. Limiting the ability for municipalities to generate funding for these programs had the potential to interfere with the production of affordable housing and the rule was deleted accordingly.

COMMENT: The requirement for consideration of whether increased units can help provide affordable housing as part of a "d" variance is positive.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The mandatory requirements for attached single family housing and decreased lot sizes without variances are very positive improvements to the rules that will eliminate unnecessary cost-generative features of municipal zoning as required by *Mount Laurel II*.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The return to presumptive densities is a positive change. Presumptive densities worked well in the second round and provided predictable rules for landowners and developers.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: Presumptive densities are said to be a function of current zoning (residential or non residential), planning area and sewer service. They are based on Planning Area designations as reflected in the State Plan Policy Map (SPPM). Which is the appropriate map to use? There are many proposed amendments to state planning areas based

on Cross-acceptance that would affect presumptive density.

RESPONSE: The currently adopted SPPM is the correct map to use. This map is updated periodically to reflect additional plan endorsement petitions that have been approved by the State Planning Commission. The most recent SPPM has been amended through May 20, 2008.

COMMENT: For towns that will accrue most of their growth share obligation from projects that were approved prior to the publication of COAH's third round rules and their amendments, compliance with the rules in a manner that will not require public financing will dramatically affect the character of the towns and their ability to follow their own Master Plans and zoning ordinances.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: The history of COAH's rulemaking since 2003 regarding zoning incentives for affordable housing has been abysmal. After receiving the court's clear direction to provide zoning incentives, COAH adopted a rule that provided no increase in market units and allowed a municipality to impose a 20 percent set-aside on the market units permitted as of right. COAH has now proposed a rule that provides minimal presumptive densities. However, the proposed minimum densities are unacceptably low and any benefit they create is dissipated by increasing the set-asides on for sale and rental housing. It is hoped that the Legislature's clear direction to provide economic incentives will result in rulemaking that creates a realistic opportunity. In order to assist COAH in its rule making, NJBA has worked with its builder members and its Land Use Planning Committee to develop realistic densities and set-asides that will create an economically feasible inclusionary development, as required by the Fair Housing Act amendments. NJBA's recommendation is that Planning Areas 1 and 2 and designated town centers and villages, COAH Regions 1 and 2 and Meadowlands growth areas develop at 20 units per acre with a 15 percent set-aside; that Planning Areas 1 and 2 and designated town centers and villages, COAH Regions 3, 4, 5, and 6 and Highlands and Pinelands growth areas develop at eight units per acre with a 20 percent set-aside; that outside Planning Areas 1 and 2, but in a sewer service area densities be set at eight units per acre with a 20 percent set-aside; that in Planning Areas 3, 4 and 5 and not in a sewer service area, there be a 40 percent density increase and a 20 percent set-aside; and that in urban and designated regional centers, [page=6016] inclusionary zoning utilize a density of 22 units per acre with a 20 percent set-aside. Additionally, as a rental option, all areas should permit 22 units per acre and require a 15 percent set-aside except in urban centers and workforce census tracts where the density should be 25 units per acre with a 15 percent requirement for mixed income. It should be clear that NJBA's recommendations are minimum recommendations. If the existing density of an area approaches or exceeds the minimum proposed density, COAH must require higher densities provided the higher density does not increase per unit construction costs. For example, it is generally accepted that the building codes permit four-story "stick construction." Above four stories of livable floor area, the codes require much more expensive construction materials that would act to deter the construction of affordable housing. COAH should be prepared to permit a variety of housing types and building configurations that will encourage high density four-story construction. The 15 percent set-aside in Planning Areas 1 and 2 and in the Meadowlands reflects the fact that many of the sites in this area of New Jersey are infill sites. Many require redevelopment and remediation, increasing the costs of constructing an inclusionary development. The NJBA also recognizes the difficulties associated with constructing affordable rental housing, especially pursuant to COAH's affordability requirements. The most experienced developers of rental housing have been clear that they cannot build an economically viable inclusionary rental development if COAH increases its set-aside to 20 percent. Even the current 15 percent set-aside has proven to be an extreme challenge in light of COAH's increased affordability standards. If COAH does not increase the average range of affordability, it is imperative that the State and New Jersey's municipalities provide a public subsidy for each affordable rental unit constructed by the private sector.

RESPONSE: The presumptive minimum densities and presumptive maximum set-asides referenced in the rule are used for the purpose of establishing realistic opportunities for the construction of affordable housing as part of a municipal petition for substantive certification. These maximum and minimum figures can be altered to achieve higher or lower set-asides and higher or lower densities subject to local development conditions, financial feasibility and the

prudent use of land. When analyzing sites and/or zones that may be suitable for inclusionary development, municipalities should also consider densities and set-asides that reflect local conditions. In considering local conditions, municipalities may evaluate land, labor and materials costs as well as the extent to which density increases are provided and set-asides are required. Municipalities utilizing density and set-aside standards that differ from the general standards set forth in the rule proposal must demonstrate that the proposed zoning provides a realistic opportunity for the construction of affordable housing including evidence that the proposal provides adequate compensatory benefits to developers. P.L. 2008, c. 46 includes provisions regarding set-asides for inclusionary developments and will be the subject of a future rule amendment.

COMMENT: This rule provides that affordable housing units proposed through inclusionary development shall be provided through zoning for development that includes a financial incentive to produce the affordable housing, including but not limited to increased densities and reduced costs to the developer. The revised rules require that inclusionary zoning in Planning Area 1 shall permit residential development at a presumptive minimum gross density of eight units per acre and a presumptive maximum affordable housing set-aside of 25 percent of the total number of units in the development; and that inclusionary zoning in Planning Area 2 and designated centers shall permit residential development at a presumptive minimum gross density of six units per acre and a presumptive maximum affordable housing set-aside of 25 percent of the total number of units in the development. The commenter agrees that the development of affordable housing requires a financial incentive to produce the affordable housing, and the commenter respects the smart growth objectives of creating efficient and compact developments in areas where infrastructure already exists and environmental constraints are few. However, COAH has also indicated that the regulations are not intended to drastically alter the character of existing communities. Where there is little remaining land and the available land is contiguous to existing single family neighborhoods, it may be inappropriate to create inclusionary zones at six or eight units per acre. COAH should permit municipalities to set up a locally appropriate zoning scheme in order to meet their fair share obligations.

RESPONSE: The presumptive minimum densities and presumptive maximum set-asides referenced in the rule are used for the purpose of establishing realistic opportunities for the construction of affordable housing as part of a municipal petition for substantive certification. These maximum and minimum figures may be altered to achieve higher or lower set-asides and/or higher or lower densities subject to demonstration of financial feasibility and prudent land use. When analyzing sites and/or zones that may be suitable for inclusionary development, municipalities should also consider densities and set-asides that reflect local conditions. In considering local conditions, municipalities should evaluate land, labor and materials costs as well as the extent to which density increases are provided and set-asides are required. Municipalities utilizing density and set-aside standards that differ from the general standards set forth in the rule proposal must demonstrate that the proposed zoning provides a realistic opportunity for the construction of affordable housing including evidence that the proposal provides adequate compensatory benefits to developers.

COMMENT: The commenter requests that COAH clarify proposed N.J.A.C. 5:97-6.4(a) to require that municipalities zone in such a way as to provide options for both increased densities and reduced costs to the developer, to be chosen at the developer's discretion, as compensatory benefits. The commenter notes that institutional developers such as colleges and universities cannot realize the benefits of increased densities and therefore other cost saving incentives should be considered as compensatory benefits.

RESPONSE: On July 17, 2008, Governor Corzine signed P.L. 2008, c. 46 into law. Provisions of this law replace municipal abilities to impose affordable housing requirements on non-residential development in general with a Statewide development fee of 2.5 percent of the equalized assessed value of the non-residential development. Non-profit educational facilities are exempt entirely. The Council will amend its rules in the future to reflect the new law.

COMMENT: During the State Plan Cross Acceptance Process, numerous changes to the State Plan Planning Area boundaries within Somerset County were proposed and agreed to by the Office of Smart Growth during the Negotiation Process. Absent an adopted, updated State Development and Redevelopment Plan, municipalities should be permitted to

utilize planning area delineations agreed to during the Negotiation Phase of Cross Acceptance when determining appropriate presumptive densities to be applied to inclusionary zoning and vacant land. Furthermore, municipalities should not be bound to the DEP's draft modified sewer service area boundaries used in the May 2nd Vacant Land Analysis, which are subject to correction during the County Wastewater Management Planning (WMP) Process. COAH should accept the use of existing adopted sewer service area boundaries or revised sewer service area boundaries that have been included in municipally-endorsed draft or final county WMPs. An agreement between COAH and DEP regarding coordination of Wastewater Management Planning and planning for affordable housing in accordance with the State Fair Housing Act is strongly recommended. In addition, an agreement between COAH and the State Planning Commission is needed regarding coordination between the State Plan and planning for affordable housing Statewide. A similar planning coordination agreement involving COAH and the Highlands Council is also recommended.

RESPONSE: The current State Plan Policy Map (SPPM) is the only adopted map available from the State Planning Commission (SPC). The currently adopted SPPM has been amended through May 20, 2008. It should be noted that in the current rule proposed by the Council, planning area designations are used primarily in determining policy objectives related to development densities in inclusionary zones proposed by municipalities. Where planning areas have been informally accepted through the cross acceptance process, municipalities may include the analysis work associated with the cross acceptance process if so needed to demonstrate why the Council should consider proposed densities that differ from the standards set forth in N.J.A.C. 5:97-6.4(b). Similarly, sewer service area boundaries that are in the process of being revised as a result oft he County Wastewater Management Planning Process may be discussed in a municipal petition for substantive certification. Where [page=6017] expansion of boundaries is necessary to accommodate a municipal proposal for affordable housing, the Council will consult with DEP to aid in the determination as to whether the proposal represents a realistic opportunity for the construction of affordable housing. It is incumbent upon the municipality to provide all relevant information to the Council as part of the municipal petition. Additionally, the Council anticipates developing memoranda of understanding with both the SPC and DEP.

COMMENT: The proposed maximum affordable housing set-asides proposed for inclusionary zoning make it extremely difficult for municipalities to address back-logged prior round and growth share obligations without imposing significant costs on local taxpayers. The rules should encourage municipalities to negotiate increased set-asides within inclusionary developments in exchange for additional density bonuses, or other incentives. The rules should be further modified to include provisions that encourage the use of affordable housing trust fund dollars to compensate for the cost of providing additional affordable units in excess of the maximum set-aside in inclusionary developments as another way of addressing back-logs. Greater flexibility in the application of maximum set-asides can help maximize affordable housing opportunities in a way that is less sprawl inducing and more sustainable by making a greater proportion of existing and programmed system capacity available to affordable housing.

RESPONSE: The presumptive densities and set-asides referenced in the rule are used for the purpose of establishing realistic opportunities for the construction of affordable housing as part of a municipal petition for substantive certification. Subject to development conditions, prudent land use practices and financial feasibility, these maximum and minimum figures may be altered with the agreement or a developer. When analyzing sites and/or zones that may be suitable for inclusionary development, municipalities should also consider densities and set-asides that reflect local conditions. In considering local conditions, municipalities may evaluate land, labor and materials costs as well as the extent to which density increases are provided and set-asides are required. Municipalities utilizing density and set-aside standards that differ from the general standards set forth in the rule proposal must demonstrate that the proposed zoning provides a realistic opportunity for the construction of affordable housing including evidence that the proposal provides adequate compensatory benefits to developers.

COMMENT: COAH must ensure that the private sector is allowed to build affordable housing within an attached housing product. Merely encouraging municipalities to allow affordable housing within an attached housing product is not acceptable.

RESPONSE: COAH's rules set forth specific zoning requirements in N.J.A.C. 5:97-6.4(b)4. As proposed, this rule

states "... Attached single family housing, clustering and/or lot-size averaging shall be permitted in such inclusionary zones located both within and outside of a sewer service area ..."

COMMENT: Econsult has recommended that inclusionary developments within single family developments are possible if the density is increased by 39 to 49 percent. Such developments will not be permitted by DEP outside of sewer service areas. However, COAH should increase the density by at least 49 percent, instead of 40 percent, to err on the side of realistic opportunity.

RESPONSE: The range presented by Econsult reflects an inverse relationship to the value of market-rate units. Higher value areas with larger land costs associated with each unit require a lower density increase to substantiate a set-aside. Consequently, the lower end of the range was chosen to reflect minimum standards in outlying areas consisting of larger lots that are not serviced by public sewer. The Council believes that a 40 percent increase in density could be permitted under DEP regulations depending on what the current zoning in a municipality calls for. As an example, if the current zoning requires 10-acre lots and the nitrate dilution density for an area of that zone is 0.167 (that is, six-acre lots) increasing the density by 40 percent would result in 7.14-acre lots. Applying this new density to a larger tract and further reducing costs by allowing clustering, lot size averaging and attached units could, in some instances, represent a realistic opportunity for the construction of affordable housing with an adequate compensatory benefit to the developer while fully complying with DEP regulations.

COMMENT: COAH should release the name(s) of the people that wrote both of Econsult's reports related to the economic feasibility of inclusionary developments. COAH should provide a list of all housing, including any inclusionary developments, the author(s) have actually constructed.

RESPONSE: The commenter should be aware that the consultants are economists and do not construct affordable housing. The consultants have worked on the finances of numerous housing development projects and have helped structure the finances for affordable housing. Richard Voith, Ph.D, Stephen Mullin, M.A., and Lee Huang, M.G.A., were primarily responsible for the report, "Compensatory Benefits to Developers for Provision of Affordable Housing." The credentials for Econsultant and their employees can be found at http://www.econsult.com.

N.J.A.C. 5:97-6.4 and 10

COMMENT: Related to the issue of cost generation, NJBA has compiled a list of incentives and prohibitions for inclusionary developments. The commenter has provided the list below and asks COAH to consider each in its rulemaking:

Incentives: Entitlements

With designation of an inclusionary site come entitlements identified, as follows:

- -- The zoning bulk requirements for the established density must be achievable.
- -- The municipality must have completed the necessary planning, including a capital improvement program, WMP amendment, water allocation permit, etc., to provide public utilities to the site and which have to be in place by the first review period.
- -- Under the constitutional mandate to create the ability to construct affordable housing, it is the obligation of the State and incumbent on DEP to ensure that plans for public utility service are timely achieved.
- -- Application fees and review escrows must be reasonable per unit fees which are capped at submission amounts.
- -- Inspection escrows shall be capped at established MLUL amounts.
- -- The municipality shall process the development application within the time limits established in the MLUL.

- -- If the inclusionary site is in a sewer service area, regardless of State Plan planning area, there shall be an automatic waiver of planning area preference. (There are many existing sewer service areas that are not in State Plan planning areas one or two or centers)
- -- Waivers shall be allowed to create a center for inclusionary sites and the WMP amendment process without requiring that the entire municipality go through the State Plan endorsement process.
- -- Municipalities shall have to accept dedication of the stormwater management system.
- -- Housing trust funds shall be used to subsidize very low income units and meet unit adaptability requirements.
- -- Inclusionary sites shall receive priority for state site remediation benefits.
- -- Inclusionary sites shall be considered smart growth sites and entitled to all benefits available to smart growth sites by regulation or statute.
- -- In urban areas, municipalities may use housing trust funds to subsidize the cost of on-site or off-site parking.
- -- In urban areas, municipalities must provide increased security to inclusionary construction sites.
- -- DCA shall fast track PRED registration for inclusionary developments.

Incentives: Prohibitions

- -- Site improvement standards shall not exceed RSIS even with special notice to SIAB.
- -- There shall be no tree replacement or reforestation requirements or in lieu fees.
- -- No purchase of development rights (TDR, PDC or Highlands) shall be required for an inclusionary site.
- -- There shall be no in lieu fees for recreation; on site requirements for recreation facilities shall be reasonable. (See June 23, 2008 [page=6018] Appellate Division decision re: Jackson Township found no statutory authority for in lieu fees.)
- -- There shall be no impervious cover limits, as state environmental regulations shall be relied upon to establish areas to be protected.
- -- There shall be no open space requirements on site or required in lieu contributions. (Jackson decision noted above.)
- -- No fiscal studies shall be required as development is to meet a public need.
- -- There shall be no requirements for environmental studies other than those required to obtain state permits.
- -- There shall be no local traffic study if access to the development is on a county or state road.
- -- The municipality shall not require evidence of matters under the jurisdiction of county or state agencies.
- -- The Planning Board or Zoning Board shall be solely responsible for the review of applications for inclusionary developments. A determination of application completeness or application review shall not require the appearance before any other municipal board or entity including, but not limited to, the environmental commission, the historic commission, or shade tree commission.
- Municipalities must permit all affordable housing to be constructed in attached housing.

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-6.4(a)

COMMENT: This rule must be revised to be consistent with the Coastal Area Facilities Review Act (CAFRA) requirements that effectively limit densities below the level of presumptive densities as established by COAH.

RESPONSE: Inclusionary zoning is a municipal option. If CAFRA regulations prohibit zoning for densities that will support affordable housing as prescribed in the Council's rules, municipalities should not seek to apply inclusionary practices in those areas. Conversely, if inclusionary zoning is feasible in CAFRA areas, albeit not at the densities and set-asides prescribed in the proposed rule, the municipality may submit an analysis demonstrating the financial feasibility limitations that result from CAFRA regulations along with a proposed alternative density and/or set-aside.

COMMENT: COAH should not presume that inclusionary developers can only accommodate a 25 percent set-aside in Planning Areas 1 and 2 and a 20 percent in lower planning areas where they achieve dramatic increases in density. The inescapable corollary to the Appellate Division's ruling that municipalities must provide a density bonus or other compensatory benefit to justify imposing a set-aside is that there must be a relation between the benefits municipalities confer on *Mount Laurel* developers and the burdens municipalities impose on such developers. Putting aside that in *Holmdel Builders Association v. Township of Holmdel*, 121 *N.J.* 550, 582 (1990), the Supreme Court authorized the imposition of a *Mount Laurel* responsibility without a density bonus or compensatory benefit, the Supreme Court also made clear in *Mount Laurel II* that municipalities can and should maximize *Mount Laurel* yield from inclusionary projects by harnessing the value created by an increase in density. See *Southern Burlington County NAACP v. Twp. of Mount Laurel*, 92 *N.J.* 158, 267 n.29 (1983) (*Mt. Laurel II*) (clearly setting forth this principle). Thus, COAH should not cap the yield a municipality can achieve from a project to 25 percent in a Planning Area 1 or 2 or a 20 percent set-aside in lower planning areas.

RESPONSE: The presumptions employed by the Council represent a baseline that provides a basic guideline for municipalities to follow. Municipalities can and should consider the financial feasibility of any proposed zone changes within the context of balancing the benefits municipalities confer on inclusionary developers and the public benefit of obtaining affordable housing through the police powers conferred upon municipalities under the Municipal Land Use Law. The municipality may ensure that the level of affordable housing obtained through re-zoning was commensurate with the level of density increase provided or that there was a rational nexus between the municipal exercise of police power through zoning and the public benefit derived there from.

COMMENT: Developers will reflexively and vigorously complain that they should not be required to overcome a presumptive set-aside of 25 percent. The onus can be, and should be, placed on developers of affordable housing projects to prove that, based upon the specific economics of each individual proposed development project, they cannot provide a far greater set aside and still realize a "reasonable profit," especially in cases where the disparity between the base zoning and presumptive density is great. There is precedent to require developers to demonstrate that the benefits they are receiving in the name of the poor are fairly and reasonably considered to determine what can reasonably be expected of developers to advance the interests of the poor.

RESPONSE: The Council's use of presumptive densities and set-asides serves as the starting point in the dialogue suggested by the commenter. Municipalities using the standards set forth in the proposed rule will be presumed to have provided a realistic opportunity for the construction of affordable housing including any required compensatory benefits to developers. Municipalities seeking to include zoning with higher standards as part of a petition for substantive certification would have to submit supporting documentation at the time of petition. Developers seeking to challenge the validity of the Council's minimum standards would have to submit supporting documentation along with an objection to the petition. In either event, the level of affordable housing obtained through re-zoning should be commensurate with the level of density increase provided.

N.J.A.C. 5:97-6.4(b)

COMMENT: The commenter supports the amendments to replace the one for one density bonus in the proposed regulations with a new sliding scale for presumptive densities. This will give developers more realistic densities which will allow them to provide the designated affordable housing set-asides. However, the commenter opposes the part of the amendment that would set a 15 percent maximum affordable housing set-aside of the total number of units in a mixed income rental development (N.J.A.C. 5:97-6.4(b)6ii). This provision is in direct conflict with the provisions of Federal law with respect to tax-exempt bond financed projects and Low Income Tax Credit projects, which require that a minimum of 20 percent (or more) of the units in a mixed income rental development be affordable housing. The amendments should give municipalities the flexibility to work with developers to utilize these programs, and produce the most affordable housing.

RESPONSE: In cases where a funding source (Federal or otherwise) requirement exceeds the minimum standards set by the Council, developers would be required to meet standards set by the funding source. Generally, the Council will require densities of 12 units per acre with a 20 percent set-aside as a presumption of validity for zoning that is being employed for the creation of affordable rental units (N.J.A.C. 5:97-6.4(b)6i). The presumptive minimum densities and presumptive maximum set-asides referenced in the rule are used for the purpose of establishing realistic opportunities for the construction of affordable housing as part of a municipal petition for substantive certification. These maximum and minimum figures may be altered to achieve higher set-asides and/or lower densities subject to demonstration of financial feasibility. The provision of the rule that the commenter has referenced, N.J.A.C. 5:97-6.4(b)6ii, is specific to urban centers and workforce housing census tracts. In these locations only, the 15 percent set-aside included in the rule is a "presumptive maximum" that reflects higher costs typically associated with urban and infill development as well as State policy initiatives designed to avoid concentrations of low- and moderate-income households in areas where lower income households currently reside.

N.J.A.C. 5:97-6.4(b)2

COMMENT: The proposed presumptive minimum gross densities for inclusionary development in Planning Areas 1 and 2 and in designated centers would effectively cripple the planning for local Transfer of Development Rights (TDR) programs in rural municipalities as authorized under the State Transfer of Development Rights Act, N.J.S.A. 40:55D-137 et seq. The State Departments of Community Affairs and Agriculture have gone to great lengths to encourage rural municipalities to plan for and implement local TDR programs since enactment of the State enabling legislation in 2004. Notwithstanding those efforts and the financial assistance which has been provided by the State, only one [page=6019] municipality--Woolwich Township--has completed the exhaustive planning process set forth in the statute and actually adopted TDR. However, a number of more rural municipalities are committed to the concept of TDR and are in the midst of preparing Master Plans and ordinances to implement it. One of the key documents required prior to TDR adoption is, per the statute: "a Real Estate Market Analysis [REMA] of the current and future land market which examines the relationship between the development rights anticipated to be generated in the sending zone and the likelihood of their utilization in the designated receiving zone. The analysis shall include thorough consideration of the extent of development given current and projected market conditions in order to assure that the designated receiving zone has the capacity to accommodate the development rights anticipated to be generated in the sending zone." (N.J.S.A. 40:55D-148) The REMA guides the economic structure of the TDR program and provides the necessary assurances that, if implemented, the program will succeed in the marketplace. Accordingly, if a TDR program is planned which provides for affordable housing to be developed along with market rate housing within the Receiving Area the REMA will examine the financial feasibility of the inclusionary zoning requirements in the context of TDR. Only TDR programs with supportive REMAs will be approved for municipal adoption by the Office of Smart Growth. Furthermore, the presumptive densities are much higher than those which many rural municipalities seek for their receiving areas. As an example, Old York Village--Chesterfield Township's highly regarded receiving area--is being developed at a density of less than three units per gross acre. The presumptive gross densities of six and eight units per acre proposed in COAH's rules for Planning Areas 1 and 2 and designated centers would far exceed the intensity of

development which would be appropriate for small village centers within agricultural areas. In addition, the "base density" of a receiving area typically needs to be increased to accommodate the marketability of the development credit transfer. Any increase beyond COAH's proposed presumptive densities further exacerbates the problem. For the reasons cited above, the REMA is a much more sophisticated and locally-tailored approach to ensuring the economic viability of inclusionary zoning than the presumptive densities set forth in N.J.A.C. 5:97-6.4(b)2 and should be substituted for them in municipalities which adopt TDR programs.

RESPONSE: The Council recognizes the difficulties associated with accomplishing multiple goals with one land use concept. The REMA required by the TDR Act is an ideal tool for municipalities to utilize in determining the financial feasibility of density increases and corresponding affordable housing set-asides. The presumptive densities and set-asides included in the Council's proposed rule amendment reflect general standards that establish a realistic opportunity for affordable housing to be constructed using inclusionary zoning as a land use tool. However, the detailed analysis contained in a REMA would certainly contain more specific and reliable data that a municipality could rely on to demonstrate that proposed density increases provide adequate compensatory benefits to reflect this realistic opportunity. Further, COAH will be entering into a memorandum of understanding with the State Planning Commission in the near future.

COMMENT: The restoration of presumptive minimum gross densities and presumptive maximum set-asides, now calibrated by Planning Area and sewer service area, is long overdue, and will provide important predictability in the land market that is important for economically feasible inclusionary development.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: Because there are no Planning Areas within the Pinelands Area, it is unclear whether or how these densities and set-asides can be applied in the Pinelands Area. The Commission presumes that COAH did not intend to exclude the Pinelands Area from the inclusionary zoning requirements; however, the proposed rule could be interpreted to do so. In addition, if the inclusionary zoning requirements are to be applied in the Pinelands Area, the presumptive density increase mandated by N.J.A.C. 5:97-6.4(b)2iv for lands outside sewer service areas would be inconsistent with Pinelands Comprehensive Management Plan density and water quality standards in most cases and could not be permitted. The commenter suggests that the following revisions be made to the proposed rules:

N.J.A.C. 5:97-6.4(b)2ii: Inclusionary zoning in Planning Area 2, designated centers and Pinelands Regional Growth Areas and Pinelands Towns which are within existing or proposed sewer service areas shall permit residential development at a presumptive minimum gross density of six units per acre and a presumptive maximum affordable housing set-aside of 25 percent of the total number of units in the development;

N.J.A.C. 5:97-6.4(b)2v: Inclusionary zoning outside of a sewer service area in Planning Areas 3, 4 and 5, Pinelands Regional Growth Areas, Pinelands Towns, Pinelands Villages and Pinelands Rural Development Areas shall permit a presumptive density increase of 40 percent over the existing zoning. In the Pinelands Area, such an increase shall be permitted only to the extent that it does not result in residential development densities which are inconsistent with the land use and water quality standards of N.J.A.C. 7:50-5 and 6 of the Pinelands Comprehensive Management Plan. The presumptive maximum affordable housing set-aside shall be 20 percent of the total number of units in the development; and

The above language presumes that inclusionary zoning will not occur or be required in the Pinelands Preservation Area District, Special Agricultural Production Area, Forest Area and Agricultural Production Area.

RESPONSE: The site suitability provision of the rule at N.J.A.C. 5:97-3.13(b) specifies that sites designated to produce affordable housing shall be consistent with and adhere to the land use policies delineated in The Pinelands Comprehensive Management Plan and the Council would, therefore, not accept density increases on lands outside sewer service areas if doing so would be inconsistent with Pinelands density and water quality standards. COAH and the

Pinelands Commission will enter into a memorandum of understanding in the near future.

N.J.A.C. 5:97-6.4(b)2i

COMMENT: COAH should retain the 20 percent set aside requirement for projects zoned for rental and resist the development community's bogus claims that such a set aside is not economically feasible and should reduce the presumptive density to eight units per acre. West Windsor has six family rental projects, three built, one approved and for which site work will be starting shortly, one for which a concept plan has been submitted, and one in the planning stage where the property owner, if a Green Acres diversion is permitted, has agreed to provide family rentals with a 20 percent set aside. Of these six projects, one has a 25 percent set aside and four have a 20 percent set aside. The only one with a lower percent set aside, 15 percent, is a court approved project where the court rejected the Township's request that 20 percent of the units be affordable. Even then, the percentage of affordable units in the multi-family, rental portion of the development is 27 percent. At the same time, none of these projects has a density of more than eight units per acre. In light of this, West Windsor urges that the presumptive minimum density be reduced from 12 units per acre to eight units per acre.

RESPONSE: The "presumptive minimum" densities and "presumptive maximum" set-asides referenced in the rule are used for the purpose of establishing realistic opportunities for the construction of affordable housing as part of a municipal petition for substantive certification. As permitted elsewhere in the rule, these maximum and minimum figures can be altered to achieve higher or lower set-asides and/or higher or lower densities subject to demonstration of financial feasibility.

N.J.A.C. 5:97-6.4(b)2i and ii

COMMENT: The commenter presumes that maximum set-asides are maximums which can be demanded by the inclusionary zoning, that higher set-asides may be negotiated in a particular project, up to 100 percent affordable. Otherwise it would be very difficult to compensate for market rate units with certificates of occupancy since January 1, 2004. This is covered by N.J.A.C. 5:97-6.4(b)3ii, but only for projects already agreed on. What if the density increase would lead to a density in excess of that allowed by DEP Water Quality Management Planning rules? Perhaps this is why the density is only "presumptive."

RESPONSE: The presumptive maximum set-asides referenced in the rule are used, in conjunction with minimum presumptive densities, for the purpose of establishing realistic opportunities for the construction of affordable housing as part of a municipal petition for substantive [page=6020] certification. These standards may be altered to achieve higher or lower set-asides and/or higher or lower densities subject to demonstration of financial feasibility and prudent land use. In areas not serviced by sewer, the Council will consider densities based on the revised nitrate dilution standards set by DEP. To plan accordingly, municipalities should not seek to utilize inclusionary zoning that would require density increases resulting in densities that exceed the DEP standard. If a municipality seeks to apply inclusionary zoning to areas that are subject to the DEP septic standards, and compliance with the DEP standards could only be met with lower density increases, demonstration of the financial feasibility of such a proposal would be required by the Council. In analyzing financial feasibility, the municipality may determine that a decreased set-aside would be warranted based on a density increase that is less than 40 percent.

N.J.A.C. 5:97-6.4(b)3

COMMENT: Zoning is required to provide a realistic opportunity, as shown through meeting the presumptive densities, a developers agreement, or resolution approving a specific development. However, the realistic possibility of any municipality or planning board entering into an agreement with a developer is suspect given the presumed densities.

RESPONSE: The densities included in the rule reflect what the Council believes to be reasonable to ensure the efficient and effective use of land based on Planning Areas established by the State Planning Commission. Where

density increases are limited by site constraint and environmental factors, demonstration of the financial feasibility of inclusionary zoning would be required by the Council. The Council is not aware of any evidence to suggest that the presumptive densities serve as an impediment to entering into a developers agreement.

N.J.A.C. 5:97-6.4(b)3ii

COMMENT: What about resolutions of the Board of Zoning Adjustment, which have approved variances providing for affordable housing? These should also validate projects, if not zones. Of course, we cannot plan for future Board of Adjustment actions, but we have had significant Board approvals which required low and moderate income units--if only enough for the 2005 rules.

RESPONSE: Resolutions of a Zoning Board of Adjustment are granted on case specific applications that seek deviation from the strict application of zoning. As the commenter notes, one cannot plan for future Board of Adjustment actions. N.J.A.C. 5:97-6.4(b)3ii is oriented specifically to validating zoning provisions proposed by a municipality. Affordable housing units captured as a result of variances granted by the Board of Adjustment may be included in a municipal Fair Share Plan in a category separate from proposed or adopted inclusionary zoning.

N.J.A.C. 5:97-6.4(b)4

COMMENT: The elimination of the additional incentives language is appropriate based on the proposal. However, the additional language to be adopted should be rejected. COAH should not be mandating that lot sizes and lot widths be reduced. This would appear to apply to existing zoning requirements, even though they may contain the densities COAH desires, as well as up-zoning. COAH should not dictate and mandate which provisions of a zoning ordinance need to be modified to accommodate affordable housing in an inclusionary development. Such a decision should be left to local planners, with COAH reserving the right to review the inclusionary ordinance, as is required by the regulations. This is a meaningless directive, and will create negative impact based on its mandatory component.

RESPONSE: While specific decisions on lot sizes and other bulk standards are left to local planners to decide, the rule provision makes it clear that the issues must be considered in adopting inclusionary zoning to ensure that the inclusionary zoning provisions create a realistic opportunity for the creation of affordable housing.

COMMENT: Proposed N.J.A.C. 5:97-6.4(b)4 requires that bulk standards applicable to inclusionary zoning reflect decreases in lot size and lot width requirements and also that attached single family housing, clustering and/or lot-size averaging be permitted in inclusionary zones, whether such zones are within or outside sewer service areas. Such changes in bulk standards and permitted uses will be achievable in Pinelands Regional Growth Areas and Pinelands Towns, as well as in those Pinelands Villages which are within sewer service areas. However, these changes are likely to present problems in other portions of the Pinelands Area where reductions in lot size requirements or increased building height, for example, would be inconsistent with the Pinelands Comprehensive Management Plan. The commenter suggests that the following language be added at the end of N.J.A.C. 5:97-6.4(b)4: "In the Pinelands Area, any such changes in bulk standards, permitted uses or building height shall be permitted only if consistent with N.J.A.C. 7:50-5 and 6 of the Pinelands Comprehensive Management Plan."

RESPONSE: The site suitability provision of the rule at N.J.A.C. 5:97-3.13(b) specifies that sites designated to produce affordable housing shall be consistent with and adhere to the land use policies delineated in the Pinelands Comprehensive Management Plan. The Council also anticipates entering into a memorandum of understanding with the Pinelands Commission to advance the policies of both agencies.

COMMENT: This rule requires inclusive zoning to have an additional incentive, in addition to the presumptive densities. The additional incentives are vague and the increased building heights, additional stories and decreases in lot sizes and lot width requirements are arbitrary in that they do not set forth specific percentages or numbers.

RESPONSE: The guidance provided in the rule is intended to be a generalized planning tool subject to further refinement by individual municipalities to ensure that density and bulk standards work with the prescribed densities. It is incumbent upon the municipality to ensure that there are no conflicts between zoning requirements and bulk standards that would necessitate the grant of variances to approve conforming uses. It is recommended that the municipality consult with a licensed professional planner to review both the zoning ordinance and the bulk schedule contained therein.

COMMENT: The modification of the regulation with reference to increased building heights and additional stories should be deleted entirely. The "must be permitted" language will be used to argue that developers, throughout the State, are entitled to greater building heights and additional stories. Six units per acre, and even eight units per acre densities, can be accommodated in normal two-story townhouse construction. While it may be appropriate, in some cases, to increase height and stories, COAH should not suggest or direct that such revisions need to be made. Again, the character of the municipality needs to be considered, and COAH should not be attempting to alter the character of municipalities. *Mt. Laurel II* specifically indicated such was not necessary, nor was it the intent of the doctrine.

RESPONSE: The rule does not mandate increased heights and/or additional stories in zoning schedules. Rather, the rule specifies that the issues must be evaluated when determining whether any proposed density increase can be accommodated. While the six- and eight-unit-per-acre densities illustrated by the commenter would not likely require increased building heights and would therefore not be required, a more complex zoning requirement in the same illustrated scenario that required a hypothetical 80 percent open space requirement could indeed precipitate the need for increased building heights to accommodate the proposed density.

COMMENT: The rule has a closing bracket "]" after "reductions in parking" which is not preceded by an opening bracket "[." Probably the Council meant to eliminate reductions in parking, realizing that parking is controlled by RSIS.

RESPONSE: The proposed amendments published in the New Jersey Register on June 16, 2008 were clear that "reductions in parking" was proposed for deletion, and has subsequently been eliminated upon adoption of the rule.

N.J.A.C. 5:97-6.4(b)5

COMMENT: Proposed N.J.A.C. 5:97-6.4(b)5 allows municipalities to incorporate in their zoning ordinances or developer's agreements additional incentives to subsidize the creation of affordable housing. Because this provision is so open-ended, the Commission would ask that the following language be added relative to the Pinelands Area for purposes of clarity: "In the Pinelands Area, any such incentives shall be permitted only if consistent with N.J.A.C. 7:50-5 and 6 of the Pinelands Comprehensive Management Plan."

[page=6021] RESPONSE: The site suitability provision of the rule at N.J.A.C. 5:97-3.13(b) specifies that sites designated to produce affordable housing shall be consistent with and adhere to the land use policies delineated in the Pinelands Comprehensive Management Plan. The Council also anticipates entering into a memorandum of understanding with the Pinelands Commission to advance the policies of both agencies.

COMMENT: This rule provides an additional incentive to subsidize the creation of affordable housing for very low-income households, which may be included in the zoning ordinance or a developers agreement. This provision is vague and seems unnecessary given the intent is already provided for in the rules.

RESPONSE: The guidance provided in the rule is intended to be a generalized planning tool subject to further refinement by individual municipalities. While the intent may be provided elsewhere in the rule, the Council believes that including this provision will assist municipalities in considering each possibility that may result in a well crafted Fair Share Plan.

COMMENT: This language with reference to additional incentives for very low income households is unnecessary. The provision should not be modified, but should be deleted. Municipalities need no authorization in the regulations to

provide additional incentives. It is clear that very low income units need deeper subsidies. The language serves no purpose, and COAH should not be adopting regulations which serve no purpose.

RESPONSE: The rule provides guidance for municipalities to ensure that all appropriate issues are considered during the development of inclusionary zoning regulations. Past experience in plan review as well as comments to the Council's previous rules indicate that it was not clear that very low income units require deeper subsidies.

N.J.A.C. 5:97-6.4(b)6i

COMMENT: If the maximum affordable set-aside is 20 percent of the total, which is also the minimum meeting the obligation caused by the market-rate units, what incentive is there for the municipality to zone accordingly, since the market-rate portion of such development will increase the municipality's obligation by exactly the number of units it is providing? And presumably the 10 percent very low income will be increased to 13 percent in accordance with A500.

RESPONSE: The rule sets a presumptive set-aside of 25 percent in Planning Areas 1 and 2, designated centers and sewer service areas outside of Planning Areas 1 and 2 with consideration for economic feasibility. Potentially, pending a municipal demonstration of economic feasibility, set-asides could be higher provided compensatory benefits are commensurate with any additional requirements and the agreement of a developer is secured. P.L. 2006, c. 46 was signed into law on July 17, 2008. While the new law requires that 13 percent of the housing units made available for occupancy by low-income and moderate income households will be reserved for occupancy by very low income households, the law does not require that a specific percentage of the units in any specific project be reserved as very low income housing. The provision would therefore lie outside the scope of the inclusionary zoning section of the Council's rule amendment. The Council will revise its rules in the near future to reflect the new law.

COMMENT: The presumptive minimum density for rental units of 12 units per acre is unrealistic in the rural areas of Sussex County.

RESPONSE: Twelve units per acre as a presumptive minimum for rental units is a standard the Council uses as an indicator that proposed zoning regulations will generate a realistic opportunity for the production of affordable rental housing. Zoning can not specify tenure but significant incentives can encourage rental development. The standard will be relied upon only as a means to demonstrate that the proposed zoning is sufficient to address the rental obligation when credit for rental units is sought in advance of construction. Additionally, the Council accepts firm commitments from the developers of sites being approved for development as an alternative to demonstrate that rental housing will indeed be produced. The Council accepts such developer agreements as sufficient demonstration that rental units will be produced regardless of density issues. Finally, there are a myriad of other affordable housing delivery mechanisms that can provide affordable rental units without reliance on inclusionary zoning.

N.J.A.C. 5:97-6.4(b)6i and ii

COMMENT: It is one thing to say that density needs to be 12 units per acre if 10 percent of the affordable units are to be for those of very low income (that is, 30 percent or less of the area medium income). However, the way the regulation is worded, all rental projects must be at a density of 12 units per acre and contain 10 percent of the affordable units as very low. One of the rental options should allow the prior rule of 10 units per acre to remain where it is determined a project will not contain any very low income units. Since pursuant to A500 municipalities have an obligation to establish very low income units, it makes little sense for COAH to require higher densities in rental projects and mandate that very low income units must be placed in those projects.

RESPONSE: The regulation is worded properly. To demonstrate that zoning provides a realistic opportunity for the production of rental housing, the zoning must minimally allow rental projects to develop at a density of 12 units per acre. This is only required when zoning is proposed as a mechanism to address the rental obligation in advance of the units being built. Preclusions against zoning for tenure in the MLUL provide few alternatives. Consequently, the

Council has long held that it would accept zoning that provided for one density for owner-occupied units and a higher density as an incentive to produce rental units as a general demonstration of realistic opportunity. Lower density rental developments that have already been built or that are the subject of a developer's agreement need not meet this threshold.

N.J.A.C. 5:97-6.4(b)7

COMMENT: The language relating to densities in connection with "d" variance should be expanded to make clear that when the "d" variance is granted a municipality may require a greater set-aside than the 25 percent maximum suggested in earlier sections of the proposal.

RESPONSE: Municipalities can and should maximize affordable housing yield from inclusionary projects by harnessing the value created by an increase in density. This is true whether the density increase results from a zoning change or a "d" variance. The Council will provide additional guidelines for municipalities to consider in determining the relationship between density increases and affordable housing set-asides.

COMMENT: This rule provides that when considering "d" variances, municipalities may evaluate whether an increased number of residential units permitted on a site as a result of granting a variance could result in an opportunity to include affordable housing. Of course, increased density would permit more housing (both affordable and market rate units), and this vague section should be rescinded.

RESPONSE: Municipalities can and should maximize affordable housing yield from inclusionary projects by harnessing the value created by an increase in density. This is true whether the density increase results from a zoning change or a "d" variance. Historically, the affordable housing opportunities captured as a result of variances has been a valuable tool for municipalities. The rule is intended to assist municipalities in considering additional tools available to meet their affordable housing needs and the Council does not believe the rule should be rescinded.

COMMENT: One danger of this provision is that small developers could avoid having to provide affordable units by developing no more than four units at a time, even though the eventual total development was larger. The comments on the January version stated (p. 260): "thresholds set" [for how small a development is exempt from provision of affordable units] "shall include provisions to reserve the municipality's right to impose payments in lieu in the event the threshold is not exceeded initially but is subsequently exceeded through the future subdivision of remaining lands." It was stated that such a provision would be in the May amendments; but it isn't here. It should be.

RESPONSE: The commenter is correct. It is very important for municipalities to consider the potential impact of development that is broken into phases during the development application process. In crafting inclusionary zoning ordinances and applicability thresholds based on development size, provisions should be included to reserve the municipality's right to impose payments in lieu and/or on or off site construction requirements in the event the threshold is not exceeded initially but is subsequently exceeded through the future subdivision of [page=6022] remaining lands. While this is not set forth in the rule, municipalities are not precluded from incorporating such provisions in their ordinances.

COMMENT: The proposed regulation limits the municipalities' ability to require the provision of affordable housing or a payment in lieu of construction to a development threshold based upon whether the development project could result in the provision of at least one affordable unit on site, for example, the individual parcel would accommodate fewer than five dwelling units. "Sites falling below such threshold shall not be required to provide affordable housing or make a payment in lieu pursuant to N.J.A.C. 5:97-6.4(c)." This proposed regulation limits the municipalities' ability to collect a payment in lieu of construction for the affordable housing obligation being generated by the development, and thereby shifts the cost for affordable housing production to the taxpayer. In addition, this provision appears to violate the uniformity clause in the Municipal Land Use Law (MLUL) and the requirements for a municipal zoning ordinance, which, at Section 62 of the MLUL requires that: "The zoning ordinance shall be drawn

with reasonable consideration to the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate us of land. The regulations in the zoning ordinance shall be uniform throughout each district for each class or kind of buildings or other structure or uses of land, including . . ."

Proposed N.J.A.C. 5:97-6.4(b)7 unfairly restricts the municipality to collect the reasonable cost for affordable housing production required under the growth share methodology for developments generating less than one full unit of obligation. The municipalities should be permitted to collect a payment in lieu of construction on all development within the same "class or kind of buildings or other structures." In this case, the payment in lieu should be available to the municipality for all residential development, not just that development pursuant to the threshold proposed. The regulation should be revised to respect the municipal zoning constraint that all class or kind of buildings be treated uniformly, pursuant to the MLUL as well as to acknowledge the extraordinary cost burden municipalities to produce required affordable housing.

RESPONSE: The proposed amendment is in direct response to the Appellate Division decision in *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95*, *supra* at 56, where the court ruled that requirements to provide affordable housing must be accompanied by offsetting compensatory benefits. Therefore, sites that are too small to be the recipient of a compensatory benefit that is commensurate with the affordable housing requirement may not have an affordable housing requirement imposed.

N.J.A.C. 5:97-6.4(b)8

COMMENT: The rule says "Zoning in non-residential districts may permit affordable housing to be provided on or off site and may include a payment in lieu of providing affordable housing . . . " The commenter does not understand this; affordable housing should by definition be in residential (or mixed-use) districts. How can one have affordable housing requirements in a non-residential district? By the nature of the district, the construction of housing is not a permitted use. The developer would have to apply for a use variance to build (affordable) residential units in a non-residential district, which is usually bad planning (and not in accordance with principles of environmental justice). If he were not permitted to build the affordable units, he could sue not to be charged a payment in lieu, since he was not afforded a real choice. So the only requirement related to affordable housing would be the development fee. The revised version at least allows the affordable housing resulting from inclusionary non-residential zoning to be provided off site. However, a major concern is that such a requirement will strongly discourage non-residential construction in any non-residential zone with an inclusionary requirement, and thus generally diminish economic development in the State of New Jersey if inclusionary requirements for non-residential zones are widespread. Municipalities will face a Hobson's choice: make non-residential zones inclusionary, and see them not develop, or keep them non-inclusionary and have to provide housing elsewhere based on the proposed multipliers for jobs. However, A500 has removed the possibility of in lieu payment, and probably made inclusionary requirements for non-residential districts very unlikely, unless they are true mixed-use districts such as a business district with retail stores below and apartments above, as described in paragraph (b)9.

RESPONSE: On July 17, 2008, Governor Corzine signed P.L. 2008, c. 46 into law. The new law (N.J.S.A. 40:55D-8.1 through 8.7) precludes municipalities from imposing affordable housing requirements on non-residential developers and instead requires the uniform assessment of a development fee in the amount of 2.5 percent of equalized assessed value. As both the current rule and the proposed rule are in conflict with N.J.S.A. 40:55D-8.1 through 8.7, the proposed rule amendment will not be adopted and P.L. 2008, c. 46 will be the subject of a future rule amendment.

COMMENT: In light of the adoption of A500, this section needs to be revised substantially. This writer suggests that in the event a non-residential developer receives a "d" variance that the municipality be permitted to require inclusionary development or payment in lieu.

RESPONSE: The proposed amendment to this paragraph is not being adopted. P.L. 2008, c. 46 will be the subject of a future rule amendment.

N.J.A.C. 5:97-6.4(b)9

COMMENT: Inclusionary zoning and mixed use districts permit non-residential floor area increases, the percentages of which are not set forth.

RESPONSE: On July 17, 2008, Governor Corzine signed P.L. 2008, c. 46 into law. The new law (N.J.S.A. 40:55D-8.1 through 8.7) precludes municipalities from imposing affordable housing requirements on non-residential developers and instead requires the uniform assessment of a development fee in the amount of 2.5 percent of equalized assessed value. As both the current rule and the proposed rule are in conflict with N.J.S.A. 40:55D-8.1 through 8.7, the proposed rule amendment will not be adopted and P.L. 2008, c. 46 will be the subject of a future rule amendment.

COMMENT: What if the zoning for a downtown business area already allows for floor area essentially equal to the size of the lot, so that no non-residential floor area is possible, unless by taking non-residential use to the second floor? One could add residential density by adding residential floors, but not non-residential floor area, unless on a major street of a major city where patrons are willing to ascend to the second floor. The otherwise rational addition of affordable residential housing would be discouraged by inability to meet this requirement.

RESPONSE: On July 17, 2008, Governor Corzine signed P.L. 2008, c. 46 into law. The new law (N.J.S.A. 40:55D-8.1 through 8.7) precludes municipalities from imposing affordable housing requirements on non-residential developers and instead requires the uniform assessment of a development fee in the amount of 2.5 percent of equalized assessed value. As both the current rule and the proposed rule are in conflict with N.J.S.A. 40:55D-8.1 through 8.7, the proposed rule amendment will not be adopted and P.L. 2008, c. 46 will be the subject of a future rule amendment.

N.J.A.C. 5:97-6.4(b)10

COMMENT: This provision declaring vested rights pursuant to the municipal land use law exists for developments receiving approval between December 20, 2004 and June 2, 2008 is unnecessary, and will cause confusion. The vested rights pursuant to the MLUL should be controlled by the MLUL, and COAH should not attempt to intrude upon the provisions of that statute. This language is unclear, and will cause unnecessary legal dispute. The vesting provisions of the MLUL are clear, and anybody who has dealt with the MLUL understands them.

RESPONSE: The provision has been added simply to make it clear that the Council's rules in no way infringe upon the rights conferred under the MLUL.

N.J.A.C. 5:97-6.4(c)

COMMENT: COAH must revise its rules to provide standards for in lieu fees that represent the cost of constructing attached housing. The in lieu fees that COAH has adopted primarily represent the costs associated with building single family detached housing (73 percent of the sample). The costs should incorporate the reduced land and construction costs associated with attached and multi-family housing.

RESPONSE: The payment in lieu amounts have not been revised as part of the proposed amendment. The comment is therefore outside the scope of the current proposal.

[page=6023] **N.J.A.C. 5:97-6.4(c)2**

COMMENT: An inclusionary zoning ordinance which provides options for satisfying its affordable housing obligation should be at the discretion of the municipality, rather than the developer. Under *Mount Laurel II*, a constitutionally compliant municipality should be afforded the opportunity to decide how it satisfies its constitutional affordable housing obligation.

RESPONSE: The option to provide alternatives lies at the discretion of the municipality. Exercising the options provided by the municipality is at the discretion of the developer. This provision has not been revised and is therefore outside the scope of the proposed amendment.

N.J.A.C. 5:97-6.4(c)3

COMMENT: The calculation of the amount of the payment in lieu of construction should be based upon the actual cost of affordable housing production as determined by the municipality, not as proposed by region in the proposed regulation. With the passage of A500 and the elimination of the RCA, the need to equalize the cost of affordable housing production across the region is dispensed with, and the payment in lieu of construction amount should be based upon actual local conditions for the production of affordable housing, which should be determined at the local level. COAH should revise this regulation and allow the municipality to annually calculate the cost for the production of an affordable unit in its community, and the municipality should not be held to a regionally equalized subsidy calculation determined by COAH.

RESPONSE: The payment in lieu amount has not been revised from the Council's last rule adoption. The comment is therefore outside the scope of the current rule proposal.

COMMENT: COAH's rule proposal establishes in lieu fees by housing region. The rule proposal purports that the average subsidy required to produce affordable housing in each housing region is approximately \$ 160,000. COAH has estimated the average cost of subsidizing each low and moderate income unit in Region One to be \$ 180,267. With a 20 percent set-aside, this average subsidy results in each market purchaser paying a \$ 45,067 subsidy. By increasing the set-aside to 25 percent, only three market purchasers must bear the \$ 180,267 subsidy. This increases the per unit subsidy to \$ 60,089 per market unit. The required subsidy associated with a 25 percent set-aside will halt residential development in all but the best housing markets.

RESPONSE: The comment does not give consideration to compensatory benefits associated with the required set-aside. Increased densities associated with the affordable housing requirement would provide additional value to the developer thus eliminating any necessity to pass affordable housing costs, whether a result of on site construction or payment in lieu, on to any market-rate units in the development. Additionally, it should be noted that municipal ordinances that allow payments in lieu of constructing affordable units must make election of the option to be at the discretion of developers. Consequently, developers have the option of constructing affordable units as an alternative to making payments in lieu if the developer's analysis of internal economics indicates that making a payment in lieu would be detrimental to the project.

COMMENT: COAH established the initial amount of a payment in lieu when it adopted regulations on June 2, 2008. The amendment would have the impact of requiring those subsidies to remain in effect unless revised by the Council. Those subsidies, initially established by the Council, should be able to be revised by municipalities if they can establish that the difference between the actual cost of construction and the affordable price is greater than the subsidy. Affordable pricing and costs of construction vary widely across COAH regions, as your own consultant advised. By not allowing municipalities to make subsequent determinations as to the amount of subsidy needed, if the Council's established subsidy is too low, the property tax payer is forced to pick up the difference in violation of the Fair Housing Act.

RESPONSE: The amount of payments in lieu has not changed as a result of the proposed amendment. The comment is therefore outside the scope of the proposal.

N.J.A.C. 5:97-6.4(e)

COMMENT: COAH's rules should be silent with regards to design issues, especially design criteria that are not well defined. It is difficult enough to receive approval for an inclusionary development without overlaying another

requirement (even in the form of a recommendation) not required for other forms of development.

RESPONSE: The Council believes it is entirely appropriate to provide generalized design criteria recommendation to municipalities. While there are no specific requirements set forth in the rule, raising the issue is designed to assist municipalities with approaching fair share plans from a comprehensive perspective.

N.J.A.C. 5:97-6.4(g)

COMMENT: The requirement that an inclusionary zoning ordinance requires affordable units to utilize the same heating sources of market rate units within an inclusionary development presents an unfair burden on all developers and should be removed.

RESPONSE: This provision of the rule has been in place since 1992 and has not been amended. It is therefore outside the scope of the current rule proposal.

COMMENT: Please explain why the Council deems it necessary to single out the heating source in this amendment. Is it the intent that affordable units are only required to have the same heating source as market units, but not the same water, sewer, electric, air-conditioning, hot water, plumbing, fixtures, cooking source, and other amenities? Focusing on heating, the Council invites developer abuse of low and moderate income occupants. While this writer was glad to see that the June 2, 2008 adoption required affordable units to be integrated into the market rate units, COAH should also require that the same base mechanical equipment, appliances, and other amenities provided to the base market rate unit be incorporated into the affordable unit. At present, developers are permitted to meet the bare minimum of code, which very often results in affordable units having to undergo substantial renovation in short order after construction. COAH should not permit developers to treat low and moderate income occupants so poorly.

RESPONSE: The heating source section of the amendment is not new and has been part of the Council's rules since 1992. Heating sources were originally the focus of the 1992 rules when the Council became aware that some affordable housing developers were reducing construction costs and ongoing affordability by installing low cost/high operating expense electric heaters in affordable units when comparable market-rate units had gas heat that may have cost more to install but less to operate. The Council appreciates the commenter's concern and will give consideration to whether a future rule amendment may be necessary to reflect similar issues regarding other utilities and/or appliances.

N.J.A.C. 5:97-6.4(h)

COMMENT: This has not been changed as has the wording of N.J.A.C. 5:97-3.14(a) and (b). If it is intended to require only that the affordable units be handicapped accessible, this needs to be corrected.

RESPONSE: N.J.A.C. 5:97-6.4(h) has not been amended since the Council's last rule adoption. This rule clearly cross cites to N.J.A.C. 5:97-3.14 which specifies that the rule applies to units included in a municipal fair share plan.

N.J.A.C. 5:97-6.5

COMMENT: Why did COAH eliminate the requirement for zoning on site for prior round sites prior to adoption of a third round plan?

RESPONSE: A comment to the previous rule pointed out that, by definition, zoning that was included in a housing element and fair share plan that received prior round substantive certification or a judgment of compliance would have to have been adopted prior to the filing of a third round housing element and fair share plan. Therefore, N.J.A.C. 5:97-6.5(c)3 was deleted.

N.J.A.C. 5:97-6.5(a)

COMMENT: COAH has had a rule addressing the status of sites that were approved as part of a previous substantive certification since 1994. The purpose of the rule has been to avoid the disruptive impact of a municipality unilaterally eliminating an inclusionary site that may not have been developed due to events such as a downturn in the economy, [page=6024] sewer moratorium, etc. The rule provides that a developer can maintain rights by submitting a development application. COAH must clarify that the development application does not require a completeness determination by the municipality. If a developer goes through the time and expense of completing the engineering for an inclusionary development, it is clear that the developer is serious about building an inclusionary development. His or her rights cannot be compromised because of a municipal determination that the application is not complete. Municipalities commonly delay or deny completeness determinations for applications that are not favored by municipal officials. Allowing a municipality to eliminate a site based on a completeness determination is similar to allowing a municipality to determine its low and moderate income housing obligation based on the growth it is willing to accept.

RESPONSE: Pursuant to the MLUL, it is incumbent upon developers to submit complete applications when seeking development approvals. A municipality may not unilaterally eliminate a site that has been included in a previously certified fair share plan. A municipality that has actually effected the construction of the affordable housing units it is obligated to provide pursuant to section 311(g) of the FHA may delete a site or sites without prior approval of the Council. However, to determine if this condition has been met, municipalities must obtain a determination from the Council as to whether the municipality has effected construction of its entire affordable housing obligation and this involves notification to all interested parties who would therefore have an ability to provide. Therefore, the owner of a site that was included in a previous plan may object to the removal of his or her site regardless of the status of any application for development. Additionally, the Council requires municipalities to provide information on all decisions on applications for development on any un-built sites included in the prior round certified fair share plan. Deeming an application incomplete would be a decision that must be forwarded to the Council.

N.J.A.C. 5:97-6.5(c)

COMMENT: This rule protects the status of an inclusionary development if it is suitable pursuant to N.J.A.C. 5:97-3.13 and market conditions create a realistic opportunity for affordable housing. N.J.A.C. 5:97-3.13 includes language that is consistent with the SDRP. COAH must be clear that sites with public water and sewer in Planning Areas 3, 4 and 5 shall be deemed suitable sites. COAH must also clarify the criteria it will use to determine that market conditions create a realistic opportunity for affordable housing.

RESPONSE: Sites with public water and sewer are the preferred location for affordable housing regardless of Planning Area. Site suitability considers this as well as an analysis of environmental constraints not associated with water and wastewater infrastructure. Market conditions vary with housing cycles and locations and must therefore be considered on a case by case basis. For example, excess supply, excessive demand and the cost of funds could all impact affordable housing opportunities albeit for different reasons with different results.

N.J.A.C. 5:97-6.5(c) and (d)

COMMENT: Here the Council can use the (currently poor) marketing conditions to exclude even a site included in a prior plan! The Council's own comments (p. 278) suggest rather that "market conditions typically correct over time and development will eventually occur." The Council should restrict removal of previously certified sites to those which have been rendered unlikely to develop by physical or legal changes, not temporary market conditions. N.J.A.C. 5:97-6.5(e) can penalize a municipality for non-development of a site in a previously certified plan even during plan evaluation if no developer has stepped forward to develop a site. It is not right to hold municipalities hostage to developers' decisions, unless the Council concludes that the municipality has acted in bad faith in discouraging development of the site.

RESPONSE: As a part of the municipal petition for substantive certification and in subsequent monitoring periods, municipalities must provide information to the Council to specify why previously zoned site have not yet developed.

Market conditions represent but one of the items the Council will consider. Site suitability factors as specified in N.J.A.C. 5:97-3.13 will also be considered as will the record on decisions made on applications for development.

N.J.A.C. 5:97-6.6

COMMENT: Executed redevelopment agreements with developers should also identify any infrastructure capacity improvements necessary to accommodate the affordable housing units that will be created, and specify in its phasing schedule, when said improvements will be made.

RESPONSE: COAH would include a discussion of infrastructure capacity in its project review process.

COMMENT: Redevelopment will increasingly be the means whereby municipalities' affordable housing obligations will be met. The redevelopment process is inherently slower than construction of units on greenfield sites due to the added requirements within the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (LRHL) coupled with the site and subdivision approval process in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. The two key components for redevelopment are the designation of an area in need of redevelopment or rehabilitation and a redevelopment or rehabilitation plan. COAH's rule only speaks to an area in need of redevelopment. Rehabilitation designation also provides a vehicle for accomplishing the goals of the Fair Housing Act. Rehabilitation could turn one unit into two, or convert a non-residential use to a residential one. Bonuses should be given for both areas.

RESPONSE: The definition of redevelopment in the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., specifies that "Redevelopment means clearance, replanning, development and redevelopment; the conservation and rehabilitation of any structure or improvement . . ." Consequently, the Council has always intended that areas in need of rehabilitation are a type of area in need of redevelopment. However, the rule has been clarified to ensure mutual understanding.

COMMENT: The rules should clearly permit municipalities to negotiate affordable housing set-asides within redevelopment areas that exceed the maximums provided in the rules if adequate compensation and incentives are provided.

RESPONSE: Maximums are "presumptive" and therefore municipalities are permitted to negotiate higher affordable housing set-asides within areas in need of redevelopment or rehabilitation.

COMMENT: Municipalities should be permitted to work with developers to identify and define a bedroom mix for the market-rate component of redevelopment projects that is consistent with market demand and municipal planning objectives.

RESPONSE: Affordable housing units must meet the bedroom distribution requirements of N.J.A.C. 5:80-26.3. However, a municipality may choose to request a waiver of any of COAH's regulations using the procedures outlined in N.J.A.C. 5:96-15. The Council will take the commenter's suggestion under advisement in the future for smaller projects.

COMMENT: The redevelopment requirements set forth in this rule are burdensome and make redevelopment an undue obligation upon the municipality, especially considering the required adoption of a redevelopment plan and requests for proposals.

RESPONSE: Municipalities are permitted to address affordable housing obligations through the creation of units in a redevelopment or rehabilitation area pursuant to COAH's regulations. However, a municipality is not required to address its constitutional obligation through this mechanism, rather a municipality may choose any of COAH's approved mechanisms to address these obligations.

N.J.A.C. 5:97-6.6(b)

COMMENT: The commenter is happy to see that the municipality or redeveloper is no longer required to have control of the redevelopment site at the time of petition, only to have proceeded to the point of issuing a request for proposals and having a plan for obtaining site control. The commenter still suggests that it should provide that affordable units achieved through future redevelopment plans are eligible to substitute for units described in the original petition, or to meet additional obligations not anticipated in the original plan, through the process described for amendment (*cf.* N.J.A.C. 5:94-8.11 and 5:95-5).

[page=6025] RESPONSE: A municipality is free to make changes to its Housing Element and Fair Share Plan at any time through the amendment process as outlined in N.J.A.C. 5:96-14.

COMMENT: These provisions relating to requirements for affordable housing and redevelopment areas are unnecessary. First, the growth share obligation only occurs based on the actual issuance of certificates of occupancy, so to require a municipality to designate a site as an area in need of redevelopment, adopt a redevelopment plan, and issue a request for proposals for a designated redeveloper, is unnecessary until the obligation actually arises. Second, redevelopment is controlled by a complex set of statutes, and COAH should not adopt regulations which may be inconsistent or confuse that process. COAH should simply recognize that affordable units may be incorporated in redevelopment areas, and go no further.

RESPONSE: Pursuant to N.J.A.C. 5:97-2.5(e), if the "actual growth share obligation determined [by COAH] . . . is less than the growth share obligation projected pursuant to N.J.A.C. 5:97-2.4, the municipality shall continue to provide for a realistic opportunity for affordable housing to address the projected growth share . . ." and a municipality may provide this realistic opportunity through the creation of affordable housing units in a redevelopment area so long as the required documents are provided at the time of substantive certification or are provided according to an implementation schedule that has been approved by COAH. Municipalities are not required to include redevelopment areas in their fair share plan, rather they are free to utilize any of the COAH approved mechanisms to address their affordable housing obligation. Should a municipality decide to address its constitutional obligation through affordable housing units in a redevelopment area, the municipality must follow COAH's regulations.

COMMENT: Grant credit for affordable housing that is created within redevelopment areas where the local redevelopment agency is **not** involved in the effort. Development, including construction of new affordable housing units, often occurs in redevelopment areas absent involvement by the local redevelopment agency. However, N.J.A.C. 5:97-6.6(b) would require involvement by the local redevelopment agency, which would deter private non-profit and for-profit affordable housing developers from initiating new affordable housing developments within existing redevelopment areas, and would deny municipalities credit for those projects that do occur.

RESPONSE: COAH provides affordable housing credit for units created in redevelopment and rehabilitation areas pursuant to the LRHL. If municipalities choose to address affordable housing obligations within redevelopment and rehabilitation areas, it must be under the auspices of COAH's regulations on redevelopment. COAH does not require the involvement of the local redevelopment agency, but rather, currently requires the municipality, or one of its agencies, issue an RFP in order to designate a redeveloper. COAH proposes to amend this requirement for an RFP and instead call for a copy of the RFP only if the municipality has used an RFP and has not selected a redeveloper outright. Any affordable housing units that meet COAH crediting criteria will receive credits, within the parameters of the caps and limitations language of the COAH regulations.

N.J.A.C. 5:97-6.6(b)1

COMMENT: COAH should change "redevelopment area" to "redevelopment or rehabilitations area."

RESPONSE: The definition of redevelopment in the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., specifies that "Redevelopment means clearance, replanning, development and redevelopment; the conservation and rehabilitation of any structure or improvement . . ." Consequently, the Council has always intended that areas in

need of rehabilitation are a type of area in need of redevelopment. However, the rule has been clarified to ensure mutual understanding.

N.J.A.C. 5:97-6.6(b)5

COMMENT: The proposed rule includes a requirement that a municipality issue a request for proposal. A request for proposal is not a requirement of the LRHL and is not even mentioned in the act. The LRHL in fact assumes the opposite with powers granted to the redevelopment agency to clear land, re-plan the area, contract with design professionals, construct buildings and in so doing condemn land, improve streets and infrastructure and virtually any other activity completely independently of the private sector (N.J.S.A. 40A:12A-7). COAH should remove the requirement for the issuance of a request for proposal since it is only one means of many to effectuate redevelopment plans. N.J.A.C. 5:97-6.6(e)1 contains a similar requirement for a final request for proposals that should also be removed if N.J.A.C. 5:97-6.6(b)5 is removed. Conversely, COAH could amend the requirement to add the phrase, "if applicable" to the end of the rule in the same fashion as it added such language in N.J.A.C. 5:97-6.6(e)4 to Workable Relocation Assistance Programs.

RESPONSE: COAH thanks the commenter and recognizes that many municipalities do not issue an RFP, and, instead, designate a redeveloper. As a result, COAH will clarify its regulations that call for municipalities to include a copy of an RFP with petition documents only if the municipality has chosen to use an RFP, rather than to directly designate a redeveloper.

N.J.A.C. 5:97-6.6(d)

COMMENT: Proposed N.J.A.C. 5:97-6.6(d) specifies the minimum documentation which a municipality must submit to COAH relative to a redevelopment area and redevelopment plan which provides for affordable housing. We ask that the following new paragraph be added in recognition of the fact that Pinelands Commission certification of redevelopment plans in the Pinelands Area is required in order for such plans to be considered effective: "6. If the redevelopment plan involves lands in the Pinelands Area, documentation that the ordinance adopting the redevelopment plan has been certified by the Pinelands Commission."

RESPONSE: COAH thanks the commenter. The Council intends to enter into a memorandum of understanding with the Pinelands Commission in the near future to address these and other concerns.

N.J.A.C. 5:97-6.6(d)2

COMMENT: The rule requires demonstration that the Department of Community Affairs has approved the resolution of an area in need of redevelopment designation. However, N.J.S.A. 40A:12A-6 reads in part that the failure to act on the part of the Commissioner of the Department of Community Affairs within 30 days shall also constitute approval. Further, Planning Areas 1 and 2 are considered smart growth areas by the Department within which redevelopment area designations meet the statutory requirement of being, "encouraged pursuant to any State law or regulation promulgated pursuant thereto" and mere transmittal of the adopted municipal resolution to the DCA Commissioner constitutes the establishment of the area in need designation.

RESPONSE: The Council requires a demonstration of approval of resolutions designating areas in need of redevelopment or areas in need of rehabilitation by the Department of Community Affairs only pursuant to the requirements of the Local Redevelopment and Housing Law, which would include the circumstances described the commenter. The rule has been clarified as such.

COMMENT: COAH should eliminate the requirement to demonstrate that the DCA has approved the resolution designating the area in need of redevelopment for resolutions that were adopted prior to 2003. The Local Redevelopment and Housing Law was amended in 2003 to require DCA approval of municipal resolutions to declare

areas in need of redevelopment, with certain exceptions. Prior to 2003, no such requirement existed and no such approval was granted or required.

RESPONSE: The rule has been changed to reflect that the Local Housing and Redevelopment Law did not always require approval of the resolution by DCA and demonstration of approval would only be required if approval was required by the LHRL at the time the area was designated.

N.J.A.C. 5:97-6.6(d)5

COMMENT: The rule requires that the timeline for development of the site can be stated now. As the Council stated in its reply to comments on the previous version of N.J.A.C. 5:97-6.6(b)2, "The formal redevelopment process is often protracted and by its very nature requires additional subsidies and supports." The commenter hopes that the Council will not be too rigid in assessing whether municipalities [page=6026] proposing to provide affordable units through redevelopment have met the required schedule when development has been delayed waiting for funding.

RESPONSE: COAH has provided flexibility for a municipality as it addresses its affordable housing obligation in the form of the newly adopted implementation schedule rules as outlined in N.J.A.C. 5:97-3.2(a)4.

N.J.A.C. 5:97-6.6(f)2

COMMENT: This rule change is good. The commenter has always been concerned about the fate of low-income households dispersed by redevelopment.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: COAH should make it clear that this preference for households displaced through redevelopment is a narrow exception to the general requirements of UHAC and does not undermine the general affirmative marketing requirements as established in *In Re Warren*, 132 *N.J.* 1 (1993) nor permit other types of preferences not specified by the rules. The commenter agrees that this preference is appropriate because demolitions are included in calculating the need figure and it makes sense that people involuntarily displaced should have a right to stay in their neighborhood if they so wish.

RESPONSE: The Council agrees that this placement preference for displaced, income-eligible households is a narrow exception to the affirmative marketing requirements of N.J.A.C. 5:80-26, known as UHAC.

N.J.A.C. 5:97-6.7

COMMENT: The addition of a requirement to demonstrate adequate funding for 100 percent developments and municipal bonding in case funds are not approved is a positive change, given the competitive nature of funding for New Jersey's subsidy programs.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-6.7 through 6.11

COMMENT: It violates the unfunded mandate clause of the New Jersey Constitution, the *Mount Laurel* doctrine, and the Fair Housing Act to compel municipalities to fund or to bond for non-inclusionary developments. In general, the commenter supports the variety of options offered by COAH to enable municipalities to meet the fair share obligation, such as municipally-sponsored 100 percent affordable developments and the market-to-affordable program. These programs provide a potentially significant addition to the affordable housing stock in New Jersey, without contributing to sprawl development and stretching municipal infrastructure to its limit. The commenter also approves of the use of municipal affordable housing trust funds to support the construction or preservation of affordable housing. However,

municipalities that have exhausted their trust funds must be able to rely on other levels of government (Federal, State and county) to provide funding. Moreover, with vacant, developable land in increasingly short supply, inclusionary development can no longer be relied upon to meet the bulk of the state's affordable housing need. New Jersey's taxpayers, who already face the highest property taxes in the nation, should not be exposed to liability for the cost of providing affordable housing. The *Mount Laurel* doctrine only requires that municipalities zone for affordable housing, not that they pay for it. See *In re Adoption of N.J.A.C. 5:94 and 5:95*, 390 *N.J. Super.* 1, 54 (App. Div. 2007). The bonding requirements also violate that section of the Fair Housing Act which states that nothing therein "shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing." N.J.S.A. 52:27D-311(d). Finally, a COAH regulation that could compel a municipality to utilize taxpayer funds to produce affordable housing would impose an unfunded mandate in violation of Article VIII, Section 2, paragraph 5, of the New Jersey Constitution.

RESPONSE: Evidence of adequate and stable funding is required in order to ensure that a municipality's proposed mechanism presents a realistic opportunity for the construction of affordable housing and is not required to be a municipal bond. Bonding would be necessary only if a source of funding identified in a municipal fair share plan were no longer available. In addition, the commenter should note that these various mechanisms are options which municipalities may choose in developing a Fair Share Plan. No specific mechanism is mandatory as long as the municipality provides a viable plan for meeting its affordable housing obligation. The commenter should also note that COAH compliance is, of itself, a voluntary process.

N.J.A.C. 5:97-6.7(b)4

COMMENT: This has not been changed as has the wording of N.J.A.C. 5:97-3.14(a) and (b). If it is intended to require only that the affordable units be handicapped accessible, this needs to be corrected--though if the development is 100 percent affordable, it will apply to all first floor units.

RESPONSE: The wording in N.J.A.C. 5:97-3.14(a) and (b) is the controlling factor and therefore no further change in N.J.A.C. 5:97-6.7(b)4 is necessary.

N.J.A.C. 5:97-6.7(d)2

COMMENT: The rule still does not include eminent domain specifically as a means to control of the property, even though a municipally sponsored, 100 percent affordable development would surely meet any test of public good. Why not? The statement in responses to comments on N.J.A.C. 5:97 that "the Council does not prohibit the use of eminent domain as a means to control property" is not a strong validation of its usability. In the rest of N.J.A.C. 5:97-6.7(d), much more proof is required that the project is ready to go now, though this is a plan for the next 10 years.

RESPONSE: The Council does not believe further clarification is warranted. The Local Redevelopment and Housing Law clearly allows the use of eminent domain as a means to acquire property. Additionally, the implementation schedule added to the Council's rules allows specific issues associated with redevelopment, such as demonstration of site control, to be provided two years to the start of construction. The Council believes that by that point in time, any delays associated with eminent domain would have been rectified.

N.J.A.C. 5:97-6.7(d)6

COMMENT: COAH is requiring municipalities to act as the underwriter/guarantor of projects by developers who propose 100 percent affordable developments. These developments may or may not be municipally sponsored. Requiring municipalities to do so is contrary to N.J.S.A. 52:27D-311(d), which states that municipalities are not required "to raise or expend municipal revenues in order to provide low and moderate income housing."

RESPONSE: COAH's regulations require towns to provide some assurance that the projects included in their Fair

Share Plans present a realistic opportunity to provide affordable housing. As such, the requirements associated with most mechanisms set forth in N.J.A.C. 5:97-6 require a resolution of intent to bond in the event of shortfall or some other means to ensure the viability of a project. The commenter should also note that 100 percent affordable housing is one of the many options which municipalities may choose in developing a Fair Share Plan and that COAH compliance is, of itself, a voluntary process.

N.J.A.C. 5:97-6.8

COMMENT: COAH's rulemaking has acknowledged that COAH's accessory apartment program has had very little success in addressing the low and moderate income housing obligation. One of the reasons for the lack of success is the Supreme Court's requirement that all affordable units be affirmatively marketed. At 40 N.J.R. 2829, COAH indicates that owners of accessory apartments may select tenants from a list. Affirmative marketing involves a random selection process following a regional marketing effort. Allowing a homeowner to select a tenant from a list is the equivalent of sanctioning "an end run" around a constitutional requirement. A review of an accessory apartment program where the municipality allowed the homeowner to select tenants from a list reveals that the majority of accessory apartments were occupied by close relatives of the home owner. COAH must require accessory apartments to be affirmatively marketed in the same manner as all other affordable units.

RESPONSE: N.J.A.C. 5:97-6.8(e)2 requires an affirmative marketing plan in accordance with UHAC for all accessory apartment units to be eligible for COAH credit.

[page=6027] **N.J.A.C. 5:97-6.9**

COMMENT: Allowing 10 percent of the fair share to be met by market to affordable units will have a negative impact on middle-income housing. Because market-to-affordable units do not expand the housing stock, they are likely to lead to increases in prices of remaining housing in the municipality and deplete the municipality's stock of housing affordable to middle-income households (since the municipality will choose the lowest cost housing available on the market to implement a market-to-affordable program).

RESPONSE: The market-to-affordable program represents a viable way to produce affordable housing in some communities, especially rural areas not served by public water and sewer. The conversion of a vacant market rate unit to an affordable unit does, in effect, create a new affordable unit that would otherwise not exist. The Council is clarifying the rule to specify that the 10 percent applies to the rehabilitation share and new construction obligation separately.

COMMENT: What is the rationale for using the "fair share obligation" as an alternative base for calculating the cap on market to affordable units? Why include the Rehabilitation Share in the base?

RESPONSE: The 10 percent applies to the rehabilitation share and the new construction obligations separately. Therefore, the rehabilitation is not counted in the base for the new construction portion of the obligation.

COMMENT: In some municipalities, the pricing of existing "market rate" rental units that are not deed restricted is less than, or equivalent to, the pricing of low-and moderate-income rental units created pursuant to COAH requirements. The Market to Affordable Housing Program should be expanded to include provisions that will enable municipalities to obtain COAH credits for existing rental units that fall within COAH's low-and moderate-income price range. The 10 percent cap on the number of affordable units that can be used to address fair share obligations through this mechanism should be increased to equal the percent of rental units that comprise the municipality's housing stock.

RESPONSE: N.J.A.C. 5:97-6.9 provides for a municipality to increase the number of units in a market to affordable program beyond the 10 percent maximum once the municipality demonstrates that it is conducting a successful program. The existence of lower cost housing does not of itself qualify a town for an increased number or percentage. The town must take action to deed-restrict the units for the required minimum period and to affirmatively

market those units in accordance with UHAC.

COMMENT: With the elimination of inclusionary development in non-residential projects and RCAs as compliance mechanisms, COAH needs to be more imaginative in providing compliance mechanisms for municipalities. By artificially restricting the market to affordable program, accessory apartment program, and being restrictive with reference to other compliance mechanisms such as support of special needs housing, assisted living, and transitional housing, COAH does not have sufficient compliance mechanisms to satisfy the need. The Council has to be more flexible and imaginative in providing new compliance mechanisms, and to eliminate restrictions on compliance mechanisms, as well as make them easier to be provided.

RESPONSE: The new regulations have increased the number of units which may be included in the market to affordable and accessory apartment programs to 10 percent each of the municipal fair share obligation. As the town demonstrates that the programs are viable in that community, the town may increase the number of units in the program. Transitional housing is no longer eligible for COAH credit and therefore this part of the comment is outside the scope of this proposal. The purpose of N.J.A.C. 5:97-6.15 is to provide flexibility for towns to propose innovative approaches to meet their affordable housing obligation. COAH staff is always available to discuss alternative means to provide affordable housing.

COMMENT: The Council should consider revising the requirement that the units must be affirmatively marketed if the unit is being created as part of a "Foreclosure Prevention Program." This program would utilize Affordable Housing Trust Fund money to pay down the existing mortgage of a qualified income eligible household that is in or in danger of being foreclosed. All other criteria must be satisfied.

RESPONSE: Municipalities may already use foreclosed properties to address their affordable housing obligations. Where a town wishes to prevent foreclosure by paying down the existing mortgage of a property in jeopardy of foreclosure, the town would bring the unit up to code and apply a deed-restriction and then be able to use this unit for rehabilitation credit. COAH will review innovative programs on a case by case basis where the municipality has estimated the future turnover and possible crediting of these units as each unit is affirmatively marketed.

N.J.A.C. 5:97-6.9(a)

COMMENT: This rule permits a market to affordable program that creates affordable housing only for moderate income households. COAH must not approve such a program unless the municipality has created a realistic opportunity for the low income households not addressed by the market to affordable program. The plan for the low income units must not be deferred to later in the substantive certification; nor may the additional low income units be imposed on inclusionary developers.

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-6.9(b)4

COMMENT: The buy-down program is an excellent way for towns to meet their COAH obligation without expanding their existing housing stock. It can be especially helpful in today's market where more homes are becoming available because of the foreclosure crisis. The commenter supports giving more flexibility for towns to meet their housing obligation through this program.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The commenter applauds the change to allow inclusion of units equal to ten per cent of the fair share obligation, which makes it a much more meaningful program for large communities.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-6.9(d)2

COMMENT: Earlier the commenter asked what is "sufficient market-rate units within the municipality, as documented by the multiple listing service." The response did not clarify what is "sufficient," but stated that "[t]he municipality must submit documentation that includes, but is not limited to, a list of unrestricted, non-affordable properties in selected price ranges within the municipality that ,with a subsidy of not less than \$ 25,000, would render the unit(s) eligible for the market to affordable program." Will the Council provide guidance as to how long this list should be? Must it be longer than the number of market-to-affordable units which the municipality is proposing in its petition? What does the Council have in mind by the phrase "but is not limited to," which could open the door to an open-ended request for more and more documentation? Will the Council provide guidance concerning "selected price ranges?" The commenter fears that the vague and open-ended nature of this requirement will discourage municipalities from using the market-to-affordable program at all.

RESPONSE: The Council does not believe that any additional guidance in the rule is necessary. Each municipality's situation is unique and COAH staff are available to assist municipalities in documenting available housing stock.

N.J.A.C. 5:97-6.10

COMMENT: There is a provision which only recognizes "permanent supportive housing" as being able to satisfy the obligation. This provision is unduly restrictive, as transitional housing does satisfy a need of society, and a need of low and moderate income persons. Those uses should be encouraged by COAH, not discouraged.

RESPONSE: This comment is outside the scope of this rule proposal.

COMMENT: The commenter is appreciative that special needs populations are noted in the rules as an option for affordable housing in a municipality.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: By requiring site control, in order to qualify as part of a compliance plan, with reference to this mechanism and others, COAH makes it difficult for municipalities to comply. It may be very well be that a municipality plans to satisfy its obligation using various mechanisms which will be implemented in the future as the growth share arises based on the issuance of Certificates of Occupancy. By requiring [page=6028] site control, COAH presumes the planning process is actually moving toward fruition, despite the lack of a growth share obligation. COAH puts the cart before the horse. Reliance should be placed upon the monitoring measures in the regulations, as opposed to all of the up front assurances COAH currently seeks.

RESPONSE: The requirement for control of sites designated for supportive/special needs housing became effective on June 2, 2008, and, therefore, is outside the scope of this proposal. The commenter should note, however, that supportive/special needs housing is one of the mechanisms where a municipality may submit an implementation schedule. As a result, the "up front assurances" of site control are not necessary at the time of petition.

N.J.A.C. 5:97-6.10 and 6.11

COMMENT: Requiring affordability controls on supportive or special needs housing and assisted living facilities that have been licensed by the State of New Jersey is unnecessary and redundant.

RESPONSE: This comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-6.10(b)3

COMMENT: The commenter thanks the Council for the change in wording which would allow units to serve some persons (such as unwed mothers) under 18 years of age.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-6.10(d)

COMMENT: This rule requires group homes, residential healthcare facilities and supportive shared living to comply with affirmative marketing requirements, which is to be a plan approved by the Council's Executive Director. However, the plan has not yet been drafted and municipalities should not be required to be responsible for monitoring the affirmative marketing of such facilities, which serve an important community need.

RESPONSE: COAH will develop these guidelines once the rule has been adopted. In cases where a facility is licensed by the Department of Human Services and/or has a waiting list maintained by its Division of Developmental Disabilities, residents will be selected in accordance with that agency's procedures.

N.J.A.C. 5:97-6.13

COMMENT: The affordable housing partnership program should be replaced with language reflecting the regional authorities as established under A500. Beyond that, any "affordable housing partnership" would be considered an RCA under the terms of A500. If there are truly innovative approaches in which towns share resources to build housing in both municipalities, those approaches could be considered under the general provision allowing municipalities to propose

RESPONSE: The proposed amendments are not being adopted because they conflict, in part, with N.J.S.A. 52:27D-329.6 and 329.9, signed into law on July 17, 2008 as part of P.L. 2008, c. 46, which will be considered as part of a future rule amendment. Specifically, regional contribution agreements, which are referenced in this section, are no longer permitted as a result of P.L. 2008, c. 46.

COMMENT: The commenter supports the provisions that allow neighboring municipalities to cooperate in addressing affordable housing, but suggest that the language be revised to make clear that the partnerships addressed in this section include more than one municipality working together sharing COAH credit, as well as other entities. As it reads, it can be seen as applying to partnerships between single municipalities and non-profits or other entities.

RESPONSE: The proposed amendments are not being adopted because they conflict, in part, with N.J.S.A. 52:27D-329.6 and 329.9, signed into law on July 17, 2008 as part of P.L. 2008, c. 46, which will be considered as part of a future rule amendment.

COMMENT: The affordable housing partnership program restricts voluntary agreements between municipalities and partner agencies to within the same COAH housing region. The requirement that municipalities and agencies be located within the same region should be removed, especially since many neighboring counties are not part of the same region.

RESPONSE: The proposed amendments are not being adopted because they conflict, in part, with N.J.S.A. 52:27D-329.6 and 329.9, signed into law on July 17, 2008 as part of P.L. 2008, c. 46, which will be considered as part of a future rule amendment.

COMMENT: Language in this section references building units. The commenter supports this specific purpose. It may be presumed, but it should be stated, that these units would require deed restrictions, affirmative marketing, etc.

RESPONSE: N.J.A.C. 5:97-6.13(b)2 requires that affordable units created through affordable housing partnership programs comply with the criteria for other compliances mechanisms in Subchapter 6, which include UHAC

requirements.

COMMENT: Provisions should be added to the affordable housing partnership program to assure projects are located in accordance with the State Plan's smart growth principles. Partnership projects should be located near concentrations of employment, services and mass transit, and designed to enhance neighborhood character and revitalize communities. Their densities should blend with the surrounding area. Municipal housing elements/fair share plans that include affordable housing partnership programs should be required to demonstrate that the proposed partnership projects have access to adequate existing system capacity.

RESPONSE: The proposed amendments are not being adopted because they conflict, in part, with N.J.S.A. 52:27D-329.6 and 329.9, signed into law on July 17, 2008 as part of P.L. 2008, c. 46, which will be considered as part of a future rule amendment.

COMMENT: Hunterdon County supports the proposed amendment allowing partnerships to build affordable units. What affect will A500 have on the partnerships permitted in this amendment?

RESPONSE: The proposed amendments are not being adopted because they conflict, in part, with N.J.S.A. 52:27D-329.6 and 329.9, signed into law on July 17, 2008 as part of P.L. 2008, c. 46, which will be considered as part of a future rule amendment.

COMMENT: The loss of regional contribution agreements as a compliance mechanism has dramatically reduced the availability of funds to assist in affordable housing efforts at a time when no State or Federal funds are available to replace the RCA funds. Many communities have used these funds to reclaim neighborhoods and provide safe, decent affordable housing, yet the elimination of RCAs has resulted in this "spigot" being turned off with no replacement funding in sight. COAH should maximize opportunities for partnering and for entrepreneurial approaches to meeting its ambitious affordable housing targets. Affordable Housing Partnership Agreements will be an important tool to assist communities in working together to meet the regional housing needs. The commenter hopes that COAH will enable use of this technique on a wide-scale basis, since it does not "transfer" units but rather provides for a cooperative effort to meet the obligation.

RESPONSE: The Council appreciates the commenter's support. The affordable housing partnership program will be amended in the future as necessary in response to the requirements of P.L. 2008, c. 46.

N.J.A.C. 5:97-6.13(b)1

COMMENT: What does "within any statutorily defined jurisdictional boundaries" mean? Would it prevent cooperating with another municipality in a different county?

RESPONSE: The proposed amendments are not being adopted because they conflict, in part, with N.J.S.A. 52:27D-329.6 and 329.9, signed into law on July 17, 2008 as part of P.L. 2008, c. 46, which will be considered as part of a future rule amendment.

N.J.A.C. 5:97-6.14

COMMENT: COAH must not allow a municipality to receive a second credit for an affordable housing unit constructed to address the 1987-1999 housing obligation. Municipalities have already received credits for these units. Following the Supreme Court's 1983 *Mount Laurel II* decision, thousands of affordable units were created in the mid to late 1980s. The controls on affordability will be expiring on many of these units prior to 2018. Therefore, there is the potential for a substantial portion of the 1999-2018 housing obligation to disappear without producing any additional affordable housing.

RESPONSE: The comment is outside the scope of this rule proposal.

[page=6029] COMMENT: Do municipalities have freedom to extend expiring controls? The landlord of a Phase 1 or 2 rental development with controls expiring could assert that his economic plan for the development included the expectation that controls would expire (and he could raise rents), and extension of the controls by the municipality would represent an economic taking from him.

RESPONSE: The third round rules do not of themselves authorize municipalities to extend expiring controls if the owner of a rental development does not agree to that extension. Regulations on certain types of units, however, such as 95/5 units, do give towns a level of control in maintaining affordability restrictions. Units which are not so encumbered are subject to the extension of controls only where there is a willing seller/owner.

COMMENT: The requirement of documentation of extension of expiring controls at the time of petition is a positive addition, because without such a requirement it is easily possible for towns to promise that a third party will extend controls and then for it to not actually happen.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: Can a town with a project that would expire slightly after round three utilize the extension of expiring controls **today** if it extends them to a time horizon acceptable to COAH? It would seem logical that towns that know they'll want to do this down the road anyway may find themselves in a better negotiating position with a project owner today given that A) the market is down; B) the expiration date is still far enough away that the owner is still far removed from the potential of future market units; and C) related to point B, the actual market value of the property will be much lower because the deed restrictions are farther from elapsing. Regarding paragraph (b)2, written commitment for owner, the COAH regulations should stipulate a minimum dollar amount or benefit that a town would have to provide the owner per unit for extending the expiring controls.

RESPONSE: The Council will review issues related to the extension of controls for units that expire after 2018 on a case-by-case basis. Municipalities may submit a waiver request pursuant to COAH's criteria demonstrating that such an extension would promote the creation of affordable housing. The Council does not believe that setting minimum dollar amounts for costs related to expiring controls is advisable as expenses to bring units up to code will vary by project and any agreement to extend controls must be mutually agreed upon between the developer and the municipality.

N.J.A.C. 5:97-8

COMMENT: If a municipality plans for and proposes a spending plan that includes a housing option beyond four years, then it should be permitted to commit housing trust funds during the proposed planning cycle, 2004 through 2018. The four-year requirement effectively breaks down the planning horizon into four-year segments which may or may not result in units coming on line. If monies are not spent within a community and end up in a Statewide trust fund, then what guarantees will a municipality have the money will return in the form of housing units? With no real nexus between the four-year spending restriction and the planning horizon, this restriction should be removed as long as the spending plan is approved by the Council.

RESPONSE: This comment is outside the scope of the rule proposal. The law at P.L. 2008, c. 46 requires that municipal affordable housing trust funds collected must be spent or contractually committed to a project within four years of collection. P.L. 2008, c. 46 will be the subject of a future rule amendment.

COMMENT: The commenter argues that the Development Trust Funds existing in the account should be spent within the full timeframe of round three (2018). This will give municipalities time to explore affordable housing alternatives both within the township and through collaborative agreements with other municipalities. Since the commenter's municipality has undertaken initiatives to enroll more units within our township, we can attest to the need for more time to effectuate these agreements.

RESPONSE: This comment is outside the scope of the rule proposal. The law at P.L. 2008, c. 46 requires that

municipal affordable housing trust funds collected must be spent or contractually committed to a project within four years of collection. P.L. 2008, c. 46 will be the subject of a future rule amendment.

COMMENT: The third round rules, the recently revised third round rules and now the proposed amendments to the revised rules all serve to identify two competing realities. The first is that COAH has expended great effort to respond to court rulings, the objections of developers, the concerns of municipalities and individuals to address affordable housing. The second reality is the inescapable consequence of answering the multitude of challenges, namely that COAH regulations have become overly complex and nearly incomprehensible to all but a handful of housing professionals. This condition has led COAH to assist municipalities by allowing use of housing trust funds to subsidize the administrative costs of preparing and certifying affordable housing plans. While COAH's assistance in this regard is commendable, it underscores the point that efforts are now being unintentionally misdirected to satisfy an enormously burdensome bureaucratic process as opposed to the actual production of affordable housing.

RESPONSE: The commenter's concerns have been noted. COAH recognizes that the myriad number of court appeals to it rules has resulted in a complex set of rules that attempt to balance court mandates, the Fair Housing Act (N.J.S.A. 52:27D-301), the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), and other State and Federal statutes and regulations affecting the development of affordable housing. In acknowledgement of this fact, COAH has developed several model documents that assist municipalities with completing and submitting a certifiable Housing Element and Fair Share Plan and which are available on COAH's website at www.nj.gov/dca/coah. In addition, COAH held several public information sessions and technical seminars to acquaint municipalities with the revised set of rules. Furthermore, COAH staff continues to be available for technical assistance by appointment or through any other medium of communication preferable to the municipality. COAH's rules do not require that affordable housing trust fund monies be spent on administrative expenses, but permits the option for municipalities wishing to take advantage of the opportunity.

COMMENT: How will the 2.5 percent equalized assessed value (EAV) fee on new non-residential development (new, reconstruction or additions) attract and retain small businesses in the state?

RESPONSE: The comment is outside the scope of this rule proposal. P.L. 2008, c. 46 will be the subject of a future rule amendment.

COMMENT: In general, COAH requires half of the affordable housing obligation to be addressed with low income units. Municipalities can get relief from providing a 50/50 low and moderate income split by providing a plan to create the required low income units elsewhere. COAH has exempted tax credit projects from this requirement. The tax credit program does not create low income units and COAH has not required a municipality to address the low income units that would normally have been required on a tax credit site elsewhere in the community. At 40 N.J.R. 2745, COAH indicates that the issues of low and moderate income split, rent stratification, range of affordability and bedroom distribution as applied to tax credit projects will be addressed in a future rule amendment. COAH must address these issues soon so that the public can develop plans for affordable housing.

RESPONSE: The Council thanks the commenter for his statements. The Council will be offering guidance on this issue in the near future.

N.J.A.C. 5:97-8.1

COMMENT: The proposed amendments to the recently adopted third round regulations have put all municipalities in a difficult situation where the status of COAH is uncertain. Municipalities are unsure as to what fee to collect from both residential and non-residential developments, and what to do with fees previously collected. COAH has failed to properly advise municipalities regarding these practical concerns which have been clearly identified by municipalities

across the State.

RESPONSE: In coordination with COAH, the Departments of Community Affairs and Treasury issued two letters on June 26, 2008 apprising municipal tax assessors, construction officials and other municipal officials regarding the impact of the new statute, P.L. 2008, c. 46, on their respective responsibilities. Subsequently, COAH created a one-stop-information portal linked to its website at http://www.nj.gov/dca/coah/legislation.shtml, which included, among other items, copies of [page=6030] the above-mentioned letters, a full length copy of P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.1 et al.), a new form, Form NRDF, with instructions to be used in the approval of non-residential developments, and an FAQ including contacts for further information. COAH issued another letter on July 24, 2008 apprising municipalities of the major changes brought about by the statute. In addition, COAH hosted six regional sessions and four all-day seminars in June, July and August. The six regional sessions provided a comprehensive overview of COAH's revised third round rules that went into effect on June 2, 2008, the pending amendments that were proposed on June 16, 2008, and the recent adoption of P.L. 2008, c. 46. The four all-day seminars provided guidance for professional planners on how to prepare a third round plan based on the new rules. In light of COAH's ongoing efforts to assist municipalities with these new regulatory regimes, the commenter is incorrect.

N.J.A.C. 5:97-8.3

COMMENT: Please define and clarify "substantial change." The absence of guiding standards will likely lead to otherwise avoidable litigation.

RESPONSE: Examples of substantial change include, but are not limited to: a substantial alteration in site layout, lot size, yard dimensions, floor plan which alters street elevation (for example, larger capacity garage, additional bedrooms, additional family room or den, etc.), change in development density or types of use within the development. A specific definition would not be comprehensive and is hence better left to the individual municipalities to determine the scope of what constitutes a substantial change in their local ordinance. Considering the broader implications of the issue, the clarity or definition sought by the commenter might be directed toward the Municipal Land Use Law.

COMMENT: The cap on non-residential development fees at 2.5 percent EAV (as reduced from three percent by the Roberts Bill) does not even come close to satisfying the burden of the growth share obligation created by the non-residential project. The Fair Housing Act states that a municipality is not required to spend its own money to comply, but based on this mandatory development fee, when compared to the cost that COAH's data has determined is required to build an affordable unit, the non-residential developers are no longer carrying their own weight with regard to the growth share obligation that they create.

RESPONSE: This comment refers to P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.1 et al), which is outside the scope of this proposal. Development fees, unlike a payment-in-lieu, are not intended to represent the cost of constructing an affordable housing unit. They are one of many dedicated revenue streams available to municipalities for affordable housing production. A municipal affordable housing trust fund program may be set up as a grants, forgivable loans, below-market loans, bridge loans, revolving loan, line of credit, and/or capital guarantee. In addition to assisting with furthering the public welfare by paying development fees for affordable housing, non-residential developers provide jobs, encourage further economic development by multiplier effect and pay tax revenues to sustain local government employment. The Council does not mandate the expenditure of municipal revenues to provide low and moderate income housing. Under the Council's current rules, a municipality can choose from a variety of mechanisms in addressing its affordable housing obligation, some of which require little or no municipal subsidy. Inclusionary zoning, for example, would require the developer to provide the affordable housing on-site, or as a possible alternative, to provide a payment in lieu of or off-site construction. Neither scenario would require a municipal subsidy. Finally, the following State, Federal and private funding sources, which do not require a municipality to spend its own money, are available for affordable housing:

New Jersey Department of Community Affairs

Urban Housing Assistance Fund

New Jersey Affordable Housing Trust Fund

Neighborhood Preservation Balanced Housing

Deep Subsidy Program

Municipal Land Acquisition Program (MLA)

Small Cities Community Development Block Grant

HOME-Housing Production Investment Fund

HOME - CHDO Production Program

State Rental Assistance Program (SRAP)

Neighborhood Revitalization Tax Credit Program

New Jersey Housing and Mortgage Finance Agency

CHOICE - Choices in Home Ownership Incentives Created for Everyone

Home Express Program

Small Rental Project Loan Program (5-25 Program)

Housing Preservation Program

Low-Income Housing Tax Credits

Special Needs Housing Trust Fund

Special Needs Revolving Loan Program

Transitional and Permanent Housing Loan Program for Aging out Youth

Federal Level Funding Sources

The Housing and Economic Recovery Act of 2008

Public Law No. 110-289

National Housing Trust Fund

Capital Magnet Fund

Emergency Assistance for Abandoned and Foreclosed Homes

U.S. Department of Housing and Urban Development

The HOME Program: HOME Investment Partnerships

Community Development Block Grants (Entitlement Communities)

Community Development Block Grants (Section 108 Loan Guarantee)

Revitalization of Severely Distressed Public Housing (HOPE VI)

Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program

Supportive Housing Program

Housing Opportunities for Persons with AIDS (HOPWA)

Supportive Housing for the Elderly (Section 202)

Supportive Housing for Persons with Disabilities (Section 811)

Assisted-Living Conversion Program (ALCP)

U.S. Department of Agriculture

COMMENT: There is nothing in the record that demonstrates the economic impact or economic feasibility of COAH's latest increase in development fees. The rulemaking indicates that the sole reason for the increase was to provide more money for municipalities (see 40 N.J.R. 2840).

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-8.3(e)

COMMENT: As COAH has exempted farm buildings including "barns, agricultural buildings, sheds, greenhouses, etc.) from generating a third round growth share obligation, COAH should also specifically exempt farm buildings from

the imposition of a non-residential development fee. Allowing development fees to be charged on exempt farm buildings would be counterproductive to our farm industry at a time it is feeling the burden of energy and labor costs, a strained economy, as well as the impacts of other State and local regulations. This stands at odds with clearly articulated state and local goals for farm preservation.

RESPONSE: The comment is outside the scope of this rule proposal. The law at P.L. 2008, c. 46 imposes a fee on all construction resulting in non-residential development, unless specifically exempted or made inapplicable. P.L. 2008, c. 46 will be the subject of a future rule amendment.

N.J.A.C. 5:97-8.3(e)3

COMMENT: The development fee requirements have been revised in that the development fee ordinance applies when a developer seeks a substantial change in site plan approval. However, developments that have received only preliminary site plan approval should be required to abide by the then-applicable development fee ordinances.

RESPONSE: This rule provision allows municipalities to maximize the amount of funds available for the provision of affordable housing. However, municipalities have the option of exempting from the development fees specific types of developments and/or specific areas or zones of the municipality, provided each classification of development is addressed consistently and in a uniform manner. The rule has been clarified to indicate that only residential development fees are covered by this provision. Non-residential development fees are governed by P.L. 2008, c. 46, which will be the subject of a future rule amendment.

[page=6031] **N.J.A.C. 5:97-8.3(f)**

COMMENT: The added language is confusing. By reference to the word "percentage," it is unclear what COAH means. Presumably, it means that the percentage used to compute the amount of development fee at the time of issuance of a building permit shall be the percentage to be imposed in connection with the development. In other words, whatever percentage of development fee is permitted at the time of decision on the issuance of the building permit shall determine the percentage to be imposed in connection with that development.

RESPONSE: The commenter is correct. The rule provision clarifies that the fee percentage collected at the issuance of a building permit may not be increased at the issuance of a certificate of occupancy following an ordinance amendment increasing the development fee percentage charged. For example, a developer who paid a residential development fee of .5 percent at the issuance of a building permit, may not, after the municipal adoption of an amendment to a development fee ordinance increasing the fee to one percent, be charged a one percent fee at CO. The rule will be clarified to indicate only residential permits are covered by this provision. Non-residential development fees are governed by P.L. 2008, c. 46, which will be the subject of a future rule amendment.

N.J.A.C. 5:97-8.7

COMMENT: The commenter supports the proposed addition to the list of eligible uses of affordable housing trust funds of the affordable housing units' share of the costs of structured parking. This will become increasingly important as more redevelopment and TODs are undertaken, and as New Jersey's cities address their Growth Share obligations.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The commenter suggests the category "green building strategies" be stricken. Wouldn't green building costs just fall under the existing "new construction" category of a spending plan? Allowable use of funds should include payment to development team members (including the developer but also architect, certifying agent, etc.) associated with the USGBC LEED rating process. This is a project cost which State funding sources may not be able to pay for, especially if the project is likely on the expensive side to build on account of the extensive green

elements.

RESPONSE: The rule provision permits municipalities to use affordable housing trust fund monies to incorporate cost-saving green building strategies associated with new construction not funded by other sources, or as part of necessary maintenance or repair of existing affordable units. If green building costs associated with newly constructed affordable units are already covered by other funding sources, a municipality would not use its housing trust fund to defray such costs.

N.J.A.C. 5:97-8.7(a)11

COMMENT: Please explain what is meant by the reference to defraying the cost of structured parking. The use of the word "shall" would seem to indicate some mandatory requirement. Is it the intent that municipalities be required to defray the cost of structured parking by using affordable housing trust funds, or is merely meant as an option? The language is unclear.

RESPONSE: The provision permits municipalities to use trust funds to defray the cost of structured parking associated with affordable housing developments. Where municipalities opt to do so, they must pro-rate the cost based on the proportion of affordable housing units included in the development. For example, an inclusionary development with a 20 percent set-aside for affordable housing may use its trust fund to defray no more than 20 percent of the cost of providing structured parking to that development.

N.J.A.C. 5:97-8.9

COMMENT: This rule should be amended to permit legal fees and costs expended by a municipality related to the enforcement of UHAC on behalf of the administrative agent outside of the 20 percent administrative cap.

RESPONSE: The 20 percent administrative cap has been signed into law as part of P.L. 2008, c. 46. Therefore, the Council does not have the authority to exceed this cap in its rulemaking.

N.J.A.C. 5:97-10

COMMENT: NJBA urges COAH to revisit the cost generation comments it has provided and incorporate them in a model ordinance that provides the regulated public with clear direction during the development review process.

RESPONSE: The Council did take the commenter's suggestions into consideration when proposing its rule amendments. The Council decided that a determination on the legitimacy of the municipal requirements can only be determined on a case-by-case basis by the Council based on the facts presented. If a developer requests relief from the Council regarding the requirements imposed on the developer, the Council will review it on a case-by-case basis to determine if it is excessive. The municipality will be afforded the opportunity to provide its basis for the requirement. The Council will consider the commenter's suggestion in its preparation of a model exclusionary zoning ordinance.

N.J.A.C. 5:97-10.2

COMMENT: The Pinelands Commission has adopted a policy that requires inclusionary developers to purchase Pineland Development Credits for each market unit within an inclusionary development. This requirement adds approximately \$ 30,000 to the subsidy necessary to produce an affordable housing unit. It is clearly an unnecessary cost generating requirement that diminishes the opportunity to construct low and moderate income housing. COAH must make every effort to exclude inclusionary developers from any requirement to purchase Pinelands Development credits.

RESPONSE: The comment is outside the scope of this rule proposal. The Council intends to enter into a memorandum of understanding with the Pinelands Commission in the near future.

COMMENT: This rule is incompatible with the incentives of N.J.A.C. 5:97-5.6(b)4. If there are to be relaxed standards, do not suggest that RSIS standards are to be presumed and force a developer to spend time, money, effort to gain exemptions and exceptions from those standards. Also, the rules in N.J.A.C. 5:97-10 should reintroduce the stronger developer relief provisions of earlier rules N.J.A.C. 5:93 and 5:94.

RESPONSE: It is expected that affordable housing sites be developed in a manner consistent with the RSIS and other applicable regulations. However, there is nothing in the regulation that requires a developer to seek exemption or exceptions to the RSIS. The comment regarding the developer relief provisions of N.J.A.C. 5:93 and 5:94 is outside the scope of this rule proposal.

COMMENT: COAH can eliminate many arguments about appropriate land development standards by revising its rule to be clear that municipalities must comply with the RSIS standards and develop a model ordinance. It should also keep abreast of recent case law and publish land use decisions that relate to cost generation in its newsletter. COAH must develop a mechanism in which it can respond to issues regarding cost generation in a timely manner. To do so, it must develop the expertise necessary to make prompt rulings. NJBA asks COAH to reconsider the idea of a compliance officer.

RESPONSE: The Council believes the rule is clear that affordable housing sites site be developed in a manner consistent with the RSIS and other applicable regulations. The comment regarding the idea of a compliance officer is outside the scope of this rule proposal.

N.J.A.C. 5:97-10.2(a)

COMMENT: The rule addresses unnecessary cost generating requirements and directs municipalities to give special attention to various requirements, including building height, impervious surface, stormwater management, open space, recreation and landscaping standards. The Pinelands Commission previously commented that any such requirements which come from the Pinelands Protection Act or the Pinelands Comprehensive Management Plan may not be waived or reduced by municipalities for affordable housing or other purposes. The Commission wishes to reiterate that comment and again ask that COAH add the following language to its rules, perhaps at the end of proposed N.J.A.C. 5:97-10.2 as a new subsection (e): "In the Pinelands Area, the provisions of N.J.A.C. 5:97-10.2(a) and (d) above shall not apply to development standards, residential density and Pinelands Development Credit obligations adopted by municipalities for purposes of conformance [page=6032] with N.J.A.C. 7:50-5 and 6 of the Pinelands Comprehensive Management Plan."

RESPONSE: The comment is outside the scope of this rule proposal. The Council intends to enter into a memorandum of understanding with the Pinelands Commission in the near future.

N.J.A.C. 5:97-10.2(a)3 and 4

COMMENT: How do we know what is "excessive" (open space, recreation, landscape, buffering, tree replacement and reforestation requirements; and excessive road width, pavement specifications and parking requirements)? Some of this, for example, parking, is controlled by RSIS, and a recent court decision calls into question any requirement for open space.

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97-10.4

COMMENT: COAH has clarified in the comments that this rule relates to the preparation and review of "special studies" that are from time-to-time required to be prepared and not to the "everyday" review of development applications (for example, site plan, subdivision, variance review) conducted by the municipal engineer and planner

(and the charging of escrow fees per the MLUL for such review). However, this rule should be revised to make this clear.

RESPONSE: The Council believes the rule is clear as written. The section is headed "Special studies/escrow accounts" and the first sentence in subsection (a) describes these special studies.

COMMENT: Banning fiscal impact studies related to affordable housing development is a welcome cost-saving change.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The commenter suggests deleting the reference to "use variance" where the rule refers to N.J.S.A. 40:55D-70d(4) (increased FAR) and d(5) (increase in permitted density). A use variance is discussed in N.J.S.A. 40:55D-70d(1) (variance for non-permitted use). The other sections are merely "d" variances. The fiscal impact statement should not be a requirement of applications for under N.J.S.A. 40:55D-70d(4) or (5). They are costly, and only further create impediments to the creation of housing. Leave it to the developer and the zoning board of adjustment to determine, on a case by case basis, if that proof is needed.

RESPONSE: This provision in the rule does not make it a requirement for the developer to do a fiscal impact study when a use variance application is requested. The rule provides this as an option to the zoning board of adjustment to request the developer perform the study only when a use variance application is requested pursuant to N.J.S.A. 40:55D-70d(4) or (5). Therefore, it is requested on a case by case basis.

N.J.A.C. 5:97-10.4(a)

COMMENT: This rule proposal would allow a municipality to require a fiscal impact study when an applicant seeks a use variance for an inclusionary development. However, the case law is clear. A municipality may not consider the fiscal impact of a development when considering the merits of a use variance application. COAH must not adopt a rule that provides a more stringent level of review for an inclusionary development, especially in a rule designed to eliminate unnecessary cost generating standards.

RESPONSE: This rule does not require a more stringent level of review for inclusionary developments. As the proposed amendment states, an impact study may be requested only as part of a use variance when the developer is requesting an alteration from the permitted density. The results of any study will be one factor that will be reviewed along with others to determine if the use variance is warranted. The board of adjustment still will have to comply with the Municipal Land Use Law in considering a use variance application.

N.J.A.C. 5:97-10.5

COMMENT: COAH has no environmental conscience and will pave over all. COAH should not work with DEP, which represents our environmental wishes.

RESPONSE: COAH intends to enter into a memorandum of understanding with DEP to clarify the goals of the organizations and set up a framework for resolving conflicting objectives.

COMMENT: The commenter does not understand why the citizens of this State need to provide "developer relief." Why do they need "relief?" Developers are overbuilding commercial buildings and then when they have no tenants, those same developers ask for reductions in taxes and the residents of New Jersey get stuck paying the tax bills for the developers. This tax situation for developers needs to make sure developers pay full taxes on the buildings they build all of the time.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: The change of this section to note that COAH "shall act as an advocate with other state agencies" is appropriate and necessary, given the frequent problems that affordable housing and inclusionary developers have with other agencies. We look forward to seeing COAH assume this role.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97-10.5(d)

COMMENT: What is the statutory authority for the Council to act as an advocate with other State agencies, including DEP and DOT?

RESPONSE: Input provided to COAH at information sessions and throughout the rulemaking process has indicated that increased interagency cooperation would assist municipalities in the implementation of Fair Share Plans. As such, the Council's broad authority pursuant to the FHA to promulgate all rules and regulations necessary for carrying out the provisions and purposes of the Act includes the establishment of regulations enabling the Council to work cooperatively with other State agencies to move affordable housing developments forward expeditiously.

COMMENT: COAH's willingness to serve as an advocate with other State agencies is a welcome addition to the rules.

RESPONSE: The Council appreciates the commenter's support.

N.J.A.C. 5:97 Appendix A

COMMENT: The development fees generated by the "replacement housing" do not address the obligation generated. How does COAH plan to address the economic hardship that the COAH rules and proposed amendments place on built-out and small town communities?

RESPONSE: The rules for development fees were prepared with the assumption that they would assist the State's municipalities with their affordable housing programs and not necessarily provide funding for the full provision of the obligation created on a unit-for-unit basis. COAH is prepared to assist all communities with their plans for affordable housing. It will make every effort to assist communities with vacant land and/or growth share adjustments based on local "built out" conditions. COAH will also be ready to assist "small town communities" with their identification of mechanisms in keeping with their character and their financial limitations.

COMMENT: Please explain how the employment projections were increased from 722,886 to 791,465.

RESPONSE: The May 2008 report incorporated municipal level employment data for 2006 that were not available when the previous report was prepared. This additional data led to a change in the annual growth rate for the State as a whole of 0.13 percent.

COMMENT: COAH's non-residential growth projection for Pine Beach exceeds the Borough's vacant land capacities. In August of 2005, COAH relied upon the Borough's municipal planning organization's estimate of 40 jobs to establish its initial Cycle III non-residential growth projections for the Borough. The Borough found that to be unreasonably high. In its amended Cycle III Housing Element and Fair Share Plan, the Borough presented COAH with an analysis of its historical job growth for the 10-year period between 1996 and 2006 and demonstrated that the Borough had not issued a single non-residential certificate of occupancy during that decade. In that same plan, which was submitted to COAH as part of the Borough's current petition for substantive certification, the Borough estimated that, between 2004 and 2014, a total of 3,675 square feet of non-residential space would be developed in the Borough, resulting in the creation of merely four jobs based upon COAH's criteria. COAH's currently adopted regulations estimated a total of 19 jobs would be created between 2004 and 2018. Based upon historical data, almost no vacant, developable land, and reasonably anticipated growth, the Borough also considered this 19-unit projection to be

unreasonably high. However, [page=6033] in its proposed regulations, COAH has now estimated that non-residential growth in the Borough will result in the creation of 224 new jobs. This estimate is clearly flawed, considering the fact that Pine Beach's non-residential zoning districts are fully developed, without a single lot left for non-residential development. The only remaining undeveloped lot in the Borough's business district is a 2.5-acre Borough-owned lot already earmarked for a municipally sponsored affordable housing project. These facts undebatably demonstrate that COAH's growth projections, at least for Pine Beach, are clearly flawed. Therefore, COAH should adjust the Borough's job growth projection prior to adopting these proposals, to spare the Borough of the unnecessary expense of proving the obvious. In addition, COAH in the future should use the most reliable data available, to assure that the public maintains confidence in the agency entrusted to properly implement the New Jersey Fair Housing Act.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which time these differences can be analyzed and necessary adjustments made.

COMMENT: The regulations as applied to our Borough do not appear fair. It appears that the vacant land analysis is based on maps which designate property owned by Johnson & Johnson (through their subsidiaries Ortho Pharmaceutical and Ortho Diagnostics) as developable land, as well as designating a railroad right of way and other privately held properties, as such. The Borough is concerned with the accuracy of the information since it is based on 2002 NJDEP Land Use Land Cover data; considers developed and privately held or preserved land that is vacant; sets forth information which does not coincide with property parcel boundaries; does not give due consideration to local zoning; and does not consider recent development approvals. Assuming COAH used this vacant land analysis in developing housing and employment projections for the Borough of Raritan, the projections would be flawed.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. This local data also reflects growth that has occurred since 2002, and is thus not directly comparable to COAH's growth estimates for the period 2004 through 2018. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred and accurate methodology in the future. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which these differences can be analyzed and necessary adjustments made.

COMMENT: COAH has also artificially reduced the housing need through filtering. COAH has not demonstrated that the conditions that lead to filtering exist in New Jersey. In contrast, NJBA has demonstrated that there is no surplus of housing in New Jersey and that there are barriers to the free movement of people to the existing housing stock.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: COAH has overstated the filtering that actually exists outside of urban centers and has provided New Jersey's exclusionary communities the benefits of a phenomenon that occurs (by COAH's own calculation) primarily in urban centers.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: COAH has developed a hypothetical mathematical construct that does not demonstrate that filtering occurs at all. The mathematical calculations do not demonstrate that housing units changing hands are affordable to low and moderate income households or that the units are actually occupied by low and moderate income households.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: COAH's calculation of the housing need does not include any of an estimated 708,081 cost burdened households. Its estimate of the impact of filtering assumes that only the households that COAH has counted will receive a housing unit that has become affordable. This is illogical and COAH has no plausible explanation to assert that only the low and moderate income households it has chosen to count will benefit from any filtering that actually takes place.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: COAH has artificially reduced the State's housing obligation by subtracting from it a projection of low and moderate income households that will pay off their mortgages and pay less than 38 percent of gross income on housing. This policy decision is unacceptable because: people who own their own homes were not included in the housing need and cannot be used to reduce a need of which they are not a part; and people that are paying 38 percent of gross income on housing are cost burdened. COAH's standard for affordability requires that affordable housing be priced so that households pay 28 to 30 percent of gross income on housing.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: In changing the percentages of the satisfaction of the need between residential and non-residential construction, please explain how and why the ratios did not change. In changing the Statewide figure for housing unit growth from 324,813 to 314,069, explain how the Statewide need number did not change. Explain in detail how and why the housing unit numbers by region and State were modified as they appear at 40 N.J.R. 3400. At 40 N.J.R. 3401, there is a chart that references the number of housing units available to deliver housing for the current round is being reduced from 324,813 to 314,069. Please explain how that change in supply does not affect the ratio of one for four or one in five.

RESPONSE: The Statewide need number of 115,666 households did not change because the need is based upon household change not housing unit change. The housing unit growth is lower because the amended report is based on updated information on housing units actually constructed after 2000. The updated information indicated an increase in the number of existing housing units at the beginning of the analysis period compared to the number in the previous report. However, because the total number of housing units at the end of the analysis period remained unchanged, the amount of growth decreased. The chart below shows the distribution of affordable housing need between residential and non-residential projected growth, the updated projected housing unit and employment growth, and the resulting ratios, before and after rounding.

| Category | Projections | Growth Share | Growth Share |
|----------|-------------|--------------|--------------|
| | | Ratio | Ratio (after |
| | | | rounding) |

| Affordable Housing Need | 115,666 | | |
|------------------------------|---------|----------|----|
| | | | |
| | 65,929 | | |
| | (57%) | | |
| | 49,736 | | |
| | (43%) | | |
| Housing (Amendment) | 314,069 | 4.763746 | 5 |
| Employment (Amendment) | 790,465 | 15.89322 | 16 |
| | | | |
| Affordable Housing Need | 115,666 | | |
| | 69,399 | | |
| | (60%) | | |
| | 46,266 | | |
| | (40%) | | |
| Housing (June 2 adoption) | 324,813 | 4.68037 | 5 |
| Employment (June 2 adoption) | 722,886 | 15.62456 | 16 |

COMMENT: The commenter commented earlier that "Residential conversions: the estimate that [only] 19.5 percent of converted units are priced for low & moderate income households (since 19.5 percent of New Jersey's housing stock was affordable to these households in 2000) seems likely to be inaccurate, given the definition of residential conversions as occurring when renovations increase the number of units in existing structures. No one is subdividing million-dollar homes to yield two \$ 500,000 units. It seems more likely that a much higher percentage of such conversions result in affordable units--typically accessory apartments." The response (p. 349) did not address my basic point, that units resulting from residential conversions are likely to have a higher percentage of affordability for low- and moderate-income households than the overall statewide percentage of affordability, which includes in its denominator many newer and more expensive houses not likely to undergo residential conversion. In addition, the response referred only to calculations of affordability for purchase, while as the Council well knows a much higher percentage of low- and moderate-income households rent, and most residential conversions are likely to result in rental properties.

RESPONSE: This methodology conservatively estimated what portion of residential conversions would be occupied by low- or moderate-income households using the best available data. In this way, researchers avoided inadvertently underestimating municipalities' affordable housing need (since Affordable Housing Need is equal to the Adjusted Base plus Demolitions minus Filtering minus Residential Conversions).

COMMENT: The bill known as A500/S1783 created a Statewide non-residential development fee of 2.5 percent that will be charged on non-residential construction or improvements. Under this bill, municipalities are not permitted to charge developers any amount in excess of this fee or compel them to provide any affordable housing units. While the changes to COAH's existing regulations that will be required in order to bring the regulations into compliance with A500/S1783 are not included within the proposed amendments, the impact of A500/S1783 is relevant here. With regard to funding the construction of affordable housing required due to growth share units associated within non-residential projects, the 2.5 percent development fee yields only a small fraction of the funding needed to address the growth share requirement of a non-residential project. The massive funding shortfall that results falls as a burden upon the municipality and the taxpayers. For example, a 50,000 square-foot retail project may have an equalized assessed value

(EAV) of \$ 10,000,000. The 2.5 percent development fee calculated from this EAV is \$ 250,000. The growth share associated with a 50,000 square-foot retail project is approximately five affordable units. Assuming it would cost \$ 161,000 to construct each affordable unit, the total cost associated with the five-unit growth share is \$ 805,000. As the cost of constructing the growth share units associated with this project is \$ 805,000 and the funding generated to construct affordable housing from this project is \$ 250,000, a shortfall in funding of \$ 555,000 exists. Clearly, the methodology included within the proposed amendments with regard to the growth share obligations associated with non-residential projects is not aligned with the development fee provisions of A500/S1783. Therefore, COAH should amend the non-residential growth share methodology within the proposed amendments to require that the value of the required non-residential growth share obligation for any project cannot exceed the 2.5 percent development fee set forth within A500/S1783.

RESPONSE: The comment is outside the scope of this rule proposal. P.L. 2008, c. 46 will be the subject of a future rule amendment.

COMMENT: COAH has performed no study to justify its formula for estimating substandard units occupied by the poor (rehab share). The formula understates the rehab share by diluting the most powerful variable for estimating substandard units (age of housing stock) by not even considering the age of a housing unit unless the housing unit is also overcrowded. Furthermore, COAH has arbitrarily reduced the rehab share by 8,500 units. Since much of the rehab share and reallocated present need is generated from New Jersey's central cities, COAH's action means that no one is responsible for addressing the housing needs of many of New Jersey's urban poor.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: COAH has determined that the State grew 25 percent faster than anticipated during the 1987-1999 period. It has found that the existing housing stock delivered much less housing than had been anticipated. Yet, COAH has declined to recalculate the municipal 1987-1999 housing obligations, claiming it would be disruptive to the municipal planning process. This assertion is ill-founded. Municipalities must amend housing elements to address the 1999-2018 housing obligation. They can address the increased 1987-1999 housing obligation as they prepare the response to the 1999-2018 housing obligation. The failure to recalculate the 1987-1999 housing obligation is particularly important because the recalculation would result in significant increases in areas of the State where the private sector would build affordable housing. In addition, the 1987-1999 rules provide set-asides that have proven successful in producing affordable housing.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: COAH has decided to dilute reallocated present need as a component of the 1987-1999 housing obligations. COAH has represented that the dilution is justified because many of the municipalities that received reallocated present need: already had substantial responsibilities for substandard units; and/or had insufficient land to address the reallocated present need allocated to them. The data do not support either COAH assertion and the dilution of the housing obligation helps isolate the poor in New Jersey's central cities.

RESPONSE: The comment is outside the scope of this rule proposal.

N.J.A.C. 5:97 Appendix C

COMMENT: The maintenance of prior 1,000-unit cap numbers and employment adjustments dilutes the affordable housing obligation and means that the prior round need will not be met. COAH needs to reallocate the units lost through these mechanisms to other municipalities.

RESPONSE: The Council practice with regard to this issue remains unchanged from N.J.A.C. 5:93. The Council believes that the rule is consistent with the FHA at N.J.S.A. 52:27D-307e, which allows the Council to place a limit, in its discretion, on the aggregate number of units which may be allocated to a municipality as its fair share of the region's

present and prospective need for low and moderate income housing based on a percentage of existing housing stock in a municipality and any other criteria including employment opportunities which the Council deems appropriate.

COMMENT: The proposal to honor previously granted employment adjustments to the prior round obligation is fair and should be adopted, as it involves recognizing corrections to factual errors.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: COAH should revise the Municipal Level 1987-1999 Obligation to reflect previously granted employment adjustments. While COAH states in Appendix C that the 10 municipalities that were previously granted an employment adjustment may utilize the adjusted number, COAH does not incorporate the adjusted obligation into the chart of municipal level figures. In its municipal level figure chart on [page=6035] page 12 of Appendix C, COAH identifies Moorestown Township, Burlington County's 1987-1999 obligation as 621 affordable units. However, Moorestown received an employment adjustment, which reduced its prior round obligation to 606 affordable units. This creates unnecessary confusion regarding the prior round obligation, as the obligation published is not the number that should be used by the municipalities that received employment adjustments.

RESPONSE: As specified in the amendment to Appendix C, municipalities affected by the 1,000-unit limitation described in N.J.A.C. 5:97-5.8 will be subject to verification and validation at the time a municipality submits its petition for substantive certification. Municipalities that were previously granted an employment adjustment may utilize the resulting adjusted 1987-1999 obligation.

COMMENT: COAH reports that, upon recalculation, Prospective Need (for 1987-1999) increased by 25 percent and that "secondary sources" decreased by nearly 40 percent (from -20,291 to -12,476 units), yet COAH indicates that there is no need to change the new construction obligation calculations published by COAH in 1993-1994, despite COAH's own new facts on the reality of what actually happened in New Jersey in the 1990s in terms of population growth and the housing economy. I reiterate my comment from March 2008. This is troubling. COAH now asserts that 7,853 units of affordable housing were built, with funding under the Low Income Housing Tax Credit (LIHTC) Program and the State's Balanced Housing (BH) Program during 1987-1999 and "never credited toward any municipal affordable housing program." 40 N.J.R. 3406. COAH now proposes to "credit" these LIHTC and BH units to its updated prior round need, as justification for not recalculating the prior round need to reflect the reality of what actually happened in New Jersey during the 1990s in terms of population growth, demolitions, filtering, and conversions, as calculated by COAH. What is the basis for COAH's assertion that these units were built but never credited in a municipal housing element and fair share plan? Has COAH reviewed all such plans? For example, Wall Township's Court-approved First Round Plan included credits for an inclusionary mobile home park (Bearmore, 37 units) that benefited from Balanced Housing funding. Did COAH identify these 37 units and exclude them from the proposed 7,853 units that are to be credited towards COAH's total updated Statewide need of 93,813 units? And how many total LIHTC and BH units were built in New Jersey during 1987-1999?

RESPONSE: In order to determine which units funded by Balanced Housing and LIHTC were eligible for credit but never included in a Housing Element and Fair Share Plan and submitted to COAH for credit, COAH cross referenced data provided by Balanced Housing and the New Jersey Housing and Mortgage Finance Agency with its own records. From 1987-1999, a total of 14,763 LIHTC units were constructed, of which 5,680 have not received COAH credit. During the same time period, 11,069 units were built using Balanced Housing funds, of which 2,173 have not received COAH credit. Regarding Wall Township, the 37 units from the Bearmore mobile home park which received Balanced Housing funding and were included in Wall's First Round Plan were not included in the proposed 7,853 units that will be credited towards the Statewide need.

COMMENT: The recalculated prior cycle obligation increased from 12 to 84 between the 2004 rules and this latest set of new rule amendments. The resultant prior round obligation is 68 due to an existing credit surplus of 16 units. The recalculated prior round obligation as presented in the June 2, 2008 rules is a gross misrepresentation of the existing

development and future growth within this small borough. The 2004 prior round obligation for Rockleigh Borough was 12. The recalculated prior round obligation for 2008 is 84, which is a 700 percent increase in the obligation. The adjusted numbers provided by the Wharton GIS Lab indicate an overall increase of the prior round obligation in the State of 3,844 units. Rockleigh Borough, which represents .005 percent of the State population, is responsible for almost two percent of the 3,844 additional units. The recalculated obligation for such a small Borough with very little growth over the past 20 years seems impossible. The commenter respectfully requests a review of the prior round obligation for Rockleigh Borough as the balance of the new units seems unevenly distributed within the northeast municipalities.

RESPONSE: Pursuant to N.J.A.C. 5:93-2.16, Rockleigh Borough received a community capacity adjustment to its 84-unit prior round obligation. The Borough's calculated need was capped at 20 percent of the estimated 1993 housing stock as part of the second round certification that was granted by the Council on November 4, 1998 and the result was a 12-unit obligation. The Borough's second round certified plan addressed the adjusted obligation with a five-unit RCA and a 16-unit alternative living arrangement. The Council's current rule proposal honors previously granted certifications. The prior round obligation numbers included in Appendix C do not reflect individually granted adjustments. As specified in the amendment to Appendix C, municipalities affected by the 1,000-unit limitation described in N.J.A.C. 5:97-5.8 will be subject to verification and validation at the time a municipality submits its petition for substantive certification. Municipalities that were previously granted other adjustments may utilize the resulting adjusted 1987-1999 obligation.

COMMENT: The use of 80 percent of median family income in footnote 1, as is now explicitly stated in these amendments, instead of 80 percent of median household income is incorrect and inconsistent with COAH's entire methodology, which is based on household income. Basing the numbers instead on household median income, conversions decrease from 8,720 Statewide to 2,594 and demolitions decrease from 4,040 Statewide to 1,168. This produces a net reduction in 1993-1999 secondary sources of 3,254 units, from 12,746 to 9,492, and a corresponding increase in recalculated prior round need of 2,834 units (the two numbers are not the same because some conversions were in towns that had a negative total need and thus were zeroed out).

RESPONSE: This methodology is consistent with the other techniques used to reach the Growth Share ratios. While the Growth Share ratios are a function of household growth, which households qualify as "low and moderate income" is a function of median family incomes. As stated in N.J.A.C. 5:93-7.4, Establishing rents and prices of units, "Median income by household size shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD;" for these income limits, HUD relies on median family income.

N.J.A.C. 5:97 Appendix D

COMMENT: Under current rules, all higher educational uses are excluded when calculating growth share requirements. Under the proposed rules, only A-3 higher education uses are excluded. Therefore, if these rules are adopted, construction of college offices or dormitories would generate an affordable housing obligation. The imposition of affordable housing obligations on the construction of college facilities will only exacerbate the financial crises facing our institutions of higher education. They will also impose an obligation on municipalities that will not receive increased tax revenue from college construction because college facilities are exempt from property taxes. Therefore, there should be no affordable housing obligations associated with college construction (of whatever type) and, as such, the exclusion in Appendix D of the current regulations for all higher educational uses should be continued without change.

RESPONSE: The Council's intent with the exclusions for higher education uses was to exempt classroom and laboratory classroom and study facilities as these spaces are codified as B-Business Use or A-3 Assembly depending on occupancy maximum of 50 +/- under the Uniform Construction Form. Applying the Group B jobs per 1,000 square feet ratio for classrooms and other assembly academic spaces would result in disproportionately high jobs obligation associated with institutions of higher education. However, the Council does not agree that all construction related to universities, of whatever type, should be excluded from growth share because there are potentially significant jobs

associated with the construction of certain college buildings, such as offices and retail, which will continue to accrue a non-residential growth share obligation.

COMMENT: Concerns have been raised about the impact of COAH's non-residential development fees on farming. The commenter understands that according to Schedule D barns and other farm buildings are excluded from this requirement, which is critical to the continued viability of farming, particularly in the Highlands.

RESPONSE: The Council appreciates the commenter's support.

[page=6036] COMMENT: Conference, meeting, and study rooms are excluded in educational facilities, but similar uses, such as meeting rooms, court rooms, jails, etc. are not excluded for governmental buildings. These critical facilities should all be excluded from growth-share obligations. At the very least, the same type of rooms excluded from institutions of higher learning should also be excluded for governmental buildings.

RESPONSE: The Council excluded certain higher education buildings from accruing a growth share obligation because information was provided to the Council documenting that there were very few, if any, new jobs associated with certain buildings, such as a laboratory. Further, by applying the Group B jobs 1,000 square feet ratio for classrooms and other assembly academic spaces would result in disproportionately high jobs obligation associated with institutions of higher education. The commenter should note that the Council considers waivers to its rules pursuant to waiver criteria enumerated in N.J.A.C. 5:96-15. For example, if a municipality seeks to submit actual jobs, they may submit documentation used to obtain financing for operations, that is, business plan or like documentation. This can be submitted in the form of a certification from the developer or business owner if one exists. The municipality may submit this data at petition if they are submitting actual jobs to date. Otherwise, the municipality may submit actual data at annual monitoring if the actual growth that occurs from non-residential development is there is a 10 percent difference in the number of jobs determined through the Appendix D jobs to square footage ratio. The municipality can submit documentation for each non-residential development where it is challenging the number of jobs determined through the use of the Appendix D jobs to square footage ratio.

COMMENT: Municipalities should not be responsible for growth share obligations generated by government facilities, over which they have no control. Municipalities cannot control the development of Federal, State and county facilities. If the State chooses to build or expand a prison or a court house, or if a county elects to build a library, the municipality in which these facilities are located must accommodate the entire growth share obligation, even though many of the workers will reside in adjoining municipalities. Moreover, these facilities pay no taxes and it is unclear whether P.L. 2008, c. 46 exempts such facilities from the payment of a development fee. In response to comments in the latest round of adopted regulations, COAH represented that "the growth share methodology will not disproportionately burden any one municipality" and that the growth share methodology "gives municipalities predictability and certainty in meeting their affordable housing obligations." 40 N.J.R. 2697, 2709 (June 2, 2008). This is clearly not so. Growth share clearly has a disparate and unfair impact on municipalities that can neither predict nor control the growth that occurs within their borders.

RESPONSE: Questions regarding exemptions from P.L. 2008, c. 46 are outside the scope of the rule proposal. Municipal and county employment was included in the employment projections provided by the NJDLWD.

COMMENT: COAH should provide clear procedures to determine the actual job growth, and the number of actual jobs should not be continually subject to recalculation, if, for instance, the building is occupied by a new tenant.

RESPONSE: The Council's methodology is predicated on the premise that development generally provides employment, and, therefore, generates a corresponding need for affordable housing and are, therefore, included in growth share. Growth share is measured by the issuance of certificates of occupancy (COs). A building occupied by a new tenant with a new lease where no COs are issued would not get a recalculated number of jobs associated with it. Municipalities affected by potentially wide disparities within the storage use group may submit actual jobs data through

waivers to COAH's rules pursuant to the waiver criteria enumerated in N.J.A.C. 5:96-15. For example, if a municipality seeks to submit actual jobs, they may submit documentation used to obtain financing for operations, that is, a business plan or like documentation, for all occurring non-residential development where there is a significant disparity between the actual jobs and the number of jobs determined through the Appendix D jobs to square footage ratio. This can be submitted in the form of a certification from the developer(s) or business owner(s) if one exists. The municipality may submit this data at petition if they are submitting actual jobs to date. Otherwise, the municipality may submit actual data for all occurring non-residential development at annual monitoring if there is a significant disparity in the number of jobs determined through the Appendix D jobs to square footage ratio and the actual growth that occurs from non-residential development.

COMMENT: Please confirm that COAH intends to permit municipalities to use actual jobs for all commercial facilities within the Storage use group.

RESPONSE: The commenter is correct that municipalities may submit actual jobs for all commercial facilities within the Storage use group through the waiver process pursuant to waiver criteria enumerated in N.J.A.C. 5:96-15. For example, a municipality seeking to submit actual jobs may submit documentation used to obtain financing for operations, that is, business plan or like documentation, for all occurring non-residential development where there is a significant disparity from the number of jobs determined through the Appendix D jobs to square footage ratio. This can be submitted in the form of a certification from the developer or business owner if one exists. The municipality may submit this data at petition if they are submitting actual jobs to date. Otherwise, the municipality may submit actual data for all occurring non-residential development at annual monitoring if the actual growth that occurs from non-residential development varies significantly, that is, by 10 percent, from the number of jobs determined through the Appendix D jobs to square footage ratio. COAH would then monitor actual jobs created over time as part of its biennial review.

COMMENT: It is not clear from Appendix D how a firehouse would be classified.

RESPONSE: A firehouse is typically classified as Use Group B; however, the local construction code official determines which use group a structure falls under.

COMMENT: Princeton University recommends that municipalities and institutions be allowed to submit data about actual jobs created by non-residential construction on college campuses for Use Groups that generate an affordable housing impact. This revision would result in a more accurate assessment of the need for affordable housing. The commenter notes briefly that this approach was discussed with approval by the Appellate Division. See *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by New Jersey Council on Affordable Housing*, 390 *N.J. Super.* 1, 64-65 (2007). For example, in the last year Princeton University opened Whitman College, a new residential college that includes dormitory rooms, a dining facility and kitchen as well as office space for the staff and houses the university's Writing Center. Using Appendix D, the calculation would call for over 500 new jobs created. In reality, the new hires were less than a 10th of the projection at 48. The jobs to housing ration of 16:1 calls for over 32 affordable housing units whereas the actual new employment at Whitman College calculates out to three new units of affordable housing. This gap should be addressed. With the amount of construction that has taken place on our campuses in recent years, I am sure a more realistic scale can be devised based on experience as opposed to the proposed Appendix D.

RESPONSE: Princeton University may submit data about actual jobs by submitting a waiver to the Council pursuant to waiver criteria enumerated in N.J.A.C. 5:96-15. For example, if a municipality seeks to submit actual jobs, they may submit documentation used to obtain financing for operations, that is, business plan or like documentation. This can be submitted in the form of a certification from the developer or business owner if one exists. The municipality may submit this data at petition if they are submitting actual jobs to date. Otherwise, the municipality may submit actual data at annual monitoring if the actual growth that occurs from non-residential development is there is a 10 percent difference in the number of jobs determined through the Appendix D jobs to square footage ratio. The municipality can submit documentation for each non-residential development where it is challenging the number of jobs determined through the use of the Appendix D jobs to square footage ratio.

COMMENT: This changes the job projections for warehouses, lowering the proposed job generation ratio from 1.5 to 1.0 job per 1,000 square feet. This new projection is still burdensome and represents a five-fold increase from COAH's previous standard of 0.2 jobs per 1,000 square feet of development. COAH has not provided an analysis of [page=6037] storage uses that supports the notion that a standard of one job per 1,000 square feet is appropriate for this type of use. Therefore, the estimate that "S" Storage uses generate jobs at the rate of one job per 1,000 square feet of development is arbitrary, capricious and unreasonable. COAH should revert to the previous conversion factor premised upon the rate 0.2 jobs per 1,000 square feet.

RESPONSE: The rule was amended from 1.5 jobs over 1,000 square feet to one job per 1,000 square feet for storage based on national literature results conducted by COAH's consultants. The Council decided to lower the square footage requirement based on a significant amount of comments as to the disparity in the S use group as well as the national literature review conducted by the consultant's. As COAH has stated, the Council will consider waivers based on actual jobs in this category in recognition of the potentially wide disparity within the use group.

COMMENT: The sole reliance on UCC use groups still inadequately addresses the breadth of land uses. The commenter continues to recommend that the COAH rules contain methodologies for accounting of jobs in special land uses that don't fall neatly into the categories provided. The commenter previously offered data centers as an example. Placed within Use Group B, a 300,000 square foot data center would project to 840 jobs and a need for 53 affordable units following COAH's methodology. This is not even close to reality. In this example, the affordable housing obligation resulting from the multipliers would likely be higher than the actual number of employees.

RESPONSE: This comment is outside the scope of the rule proposal.

COMMENT: The reduction of jobs per 1,000 square feet in warehouses from 1.5 to 1.0 is not supported by any data and contradicts the detailed study by COAH's own consultants.

RESPONSE: Reducing the jobs per square footage does not contradict the study by COAH's consultants. The Council decided to lower the square footage requirement based on a significant amount of comments as to the disparity in the S use group as well as the national literature review conducted by the consultants.

COMMENT: In calculating affordable housing obligations associated with stadium construction (Use Group A) it should be made clear that the open field area of a stadium is not included in the calculation.

RESPONSE: The square footage of an open field area is part of a stadium and is included in the calculation of growth share, as there are employees associated with the operation of the stadium, including the open field area.

COMMENT: Subject to a clarification and a comment, NJ-NAIOP commends COAH for recognizing the wide disparity between the number of actual jobs generated within the storage use group, which includes self-storage facilities and warehouse distribution centers, and the jobs per 1,000 square feet as determined by COAH.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The UCC use group projections for institutional uses, when applied to nursing home development, are excessive, prohibitive and confiscatory. Further, the Statewide Non-residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq., exempts relocated and improved nursing homes from the Statewide development fee and growth share generally, regardless of COAH region. This statutory intervention evidences a clear Legislative intent to exempt the relocation of these facilities. However, the Act only removes the growth share obligation for the developer, and not the municipality, thus creating a significant disincentive for municipalities to approve these necessary relocation projects. In order to achieve consistency with public policy that encourages development of healthcare and skilled nursing facilities to serve residents of this State, both the skilled nursing provider and the municipality must be exempt from growth share requirements.

RESPONSE: The commenter's assertion is incorrect. COAH does not impose any excessive, prohibitive or confiscatory requirements on institutional uses. The Council's methodology is predicated on the premise that development generally provides employment, and, therefore, generates a corresponding need for affordable housing and are, therefore, included in growth share. COAH does not impose any financial requirements on such developments and P.L. 2008, c. 46, which will be the subject of future rule amendment, reflects that. In fact, prior to the adoption of P.L. 2008, c. 46, COAH excluded the replacement square footage of hospitals and nursing home facilities relocating to another municipality within the same COAH region from growth share on the premise that those jobs do not represent growth, but a relocation of existing employment. A hospital or nursing home facility expansion beyond the existing square footage does represent new growth and as such creates jobs and an associated demand for housing. Furthermore, the New Jersey Department of Labor and Workforce Development's Division of Labor Market and Demographic Research data shows that this sector is expected to be in the top seven of industries with the greatest employment growth between 2004 and 2014. In addition, a review of the New Jersey Construction Reporter revealed that certificates of occupancy were issued for approximately 5.72 million square feet of I-2 Use Groups between 2004 and 2008. Notwithstanding, municipalities experiencing growth through hospital expansions and/or relocating hospital facilities within close proximity of the existing facility but not within the same COAH region, for example, in an adjacent municipality, may submit actual jobs data through waivers to COAH's regulations pursuant to the waiver criteria enumerated in N.J.A.C. 5:96-15. The legislative intent of P.L. 2008, c. 46 was never to diminish the provision of affordable housing, but rather to reform the manner in which it is provided. The Council respectfully disagrees that the public policy of providing affordable housing for low- and moderate-income households is in conflict with that of encouraging development of healthcare and skilled nursing facilities given that such facilities employ a fair number of low- and moderate-income households. Across the nation, several cases of employer advocated affordable housing ensured that those employers continued to have a viable business because of a more accessible and available workforce within a short commute.

COMMENT: COAH should not assume that all of the square footage of new non-residential development will be occupied when computing the actual growth share attributable to non-residential development. The current vacancy rate for all offices in New Jersey is 15.5 percent and the current vacancy rate for industrial (warehouse distribution) space is 9.8 percent. Therefore, there should be adjustments to the number of jobs per square feet based upon the vacancy rates for these use groups.

RESPONSE: The Council believes that the growth share methodology addresses the commenter's concerns. A municipality must zone or plan to its projection and create affordable housing in relation to the market rate growth. As such, it is unnecessary to adjust the number of jobs per square feet based upon the vacancy rates for these use groups.

COMMENT: With reference to the S Use Group for Storage, COAH was provided with a study covering multiple municipalities near the New Jersey Turnpike around Exit 8, which indicated actual job counts resulted in there being 0.26 jobs per thousand square feet. In light of that study, why was the jobs per thousand square feet for storage uses only reduced from 1.5 to 1.0? This job matrix continues to lack any relation to reality, and municipalities should be permitted to count actual jobs to establish growth projections. The regulations need to be revised to reflect the ability of municipalities to submit such studies which will provide a more accurate calculation of job growth.

RESPONSE: In addition to the 2007 survey performed for Task 4 in Appendix F of the Council's rules, the Council's consultants reviewed 12 studies/surveys completed nationwide between 1987 and 2006. These studies show a range of .46 jobs per 1,000 square feet to 1.92 jobs per 1,000 square feet; a median of 1.11 and a mean of 1.05. Taking flex space into consideration, the Council's 2007 survey of New Jersey businesses demonstrated that indeed a range of possibilities exist within the UCC use group for storage. To address the commenter's concern, the rule was amended to use a lower ratio (from 1.5 jobs per 1,000 square feet to one job per 1,000 square feet) for storage uses, which is reflective of the national literature review results conducted by the Council's consultants. The commenter should note that ratios of employees per 1,000 square feet account for a normal level of vacancy. There is a natural cyclicality to vacancies not unlike other cycles in the real estate market. Thus, even though using a constant ratio for estimating employees per 1,000 square feet may translate to temporary overestimates or underestimates of actual jobs within a

municipality when vacancy rates are low or high, these fluctuations will tend to even out over time. Nevertheless, the Council recognizes that there are extremes between labor-intensive and automated storage space, although sufficient data is not available from the consultants at this time to make a further differentiation within the [page=6038] storage use group. Consequently, municipalities affected by potentially wide disparities within this use group may submit actual jobs data through waivers to COAH's rules pursuant to the waiver criteria enumerated in N.J.A.C. 5:96-15. For example, if a municipality seeks to submit actual jobs, they may submit documentation used to obtain financing for operations, that is, business plan or like documentation, for all occurring non-residential development where there is a 10 percent difference between the actual jobs and the number of jobs determined through the Appendix D jobs to square footage ratio. This can be submitted in the form of a certification from the developer(s) or business owner(s) if one exists. The municipality may submit this data at petition if they are submitting actual jobs to date. Otherwise, the municipality may submit actual data for all occurring non-residential development at annual monitoring if there is a 10 percent difference in the number of jobs determined through the Appendix D jobs to square footage ratio and the actual growth that occurs from non-residential development.

COMMENT: Clarify the definition of assisted living facilities. The citation permits assisted living facilities to be eligible for COAH credit. The unit of credit is the bedroom and the units are considered age-restricted. However, Appendix D classifies assisted living as I--Institutional, a non-residential use. Couple this with the Roberts bill not mentioning assisted living facilities as a non-residential use. Has COAH considered the contradiction in this situation? COAH should consider removing assisted living from Appendix D and retaining it in N.J.A.C. 5:97-6.11

RESPONSE: This comment is outside the scope of the rule proposal.

COMMENT: The continuing care retirement community (CCRC) job projection formula should be reduced to 0.3 jobs per 1,000 square feet which is the actual CCRC job generation ratio based on real numbers from actual CCRC development. There is no substitute for the use of such actual data; there is no guesswork and no estimation. We are fortunate to have a huge database on which to draw, and that data unequivocally shows that 0.3 jobs per 1,000 square feet is the correct job generation figure. Due to disparity between job creation associated with CCRC's, and other uses referenced within the I and R1 Use Groups, it is recommended, in the alternative, that the actual number of jobs created be used in computing the growth share impacts of CCRC's. Specifically, the proposed footnote would read as follows:

"In recognition of the disparity between job creation associated with (i) continuing care retirement communities, including independent living, assisted living, nursing, and other facilities contained therein, and (ii) the other uses referenced in the I and R1 Use Groups, actual jobs created shall be used in computing growth share impacts for continuing care retirement communities." This proposed footnote to be added to Appendix D of the proposed rule amendments should also include clarification that job count is equal to full-time employees. This approach will insure that the municipal growth share obligation resulting from CCRC development will be rationally based on the actual jobs created.

RESPONSE: A CCRC may work with the municipality to submit a waiver to the requirements in Appendix D pursuant to the waiver criteria enumerated in N.J.A.C. 5:96-15. For example, if a municipality seeks to submit actual jobs, they may submit documentation used to obtain financing for operations, that is, business plan or like documentation. This can be submitted in the form of a certification from the developer or business owner if one exists. The municipality may submit this data at petition if they are submitting actual jobs to date. Otherwise, the municipality may submit actual data at annual monitoring if the actual growth that occurs from non-residential development is there is a 10 percent difference in the number of jobs determined through the Appendix D jobs to square footage ratio. The municipality can submit documentation for each non-residential development where it is challenging the number of jobs determined through the use of the Appendix D jobs to square footage ratio.

COMMENT: COAH should allow towns that conduct their own survey of jobs created to submit such a study and allow for the appropriate adjustments.

RESPONSE: A municipality may submit a survey of actual jobs. The Council considers waivers to its rules pursuant to waiver criteria enumerated in N.J.A.C. 5:96-15. For example, if a municipality seeks to submit actual jobs, they may submit documentation used to obtain financing for operations, that is, business plan or like documentation. This can be submitted in the form of a certification from the developer or business owner if one exists. The municipality may submit this data at petition if they are submitting actual jobs to date. Otherwise, the municipality may submit actual data at annual monitoring if the actual growth that occurs from non-residential development varies significantly, that is, by a 10 percent from the number of jobs determined through the Appendix D jobs to square footage ratio. The municipality can submit documentation for each non-residential development where it is challenging the number of jobs determined through the use of the Appendix D jobs to square footage ratio. COAH would then monitor actual jobs created over time as part of its biennial review.

COMMENT: As noted in an example previously issued for the draft rules, the projection is not reflective of actual employment generated. You have modified Appendix D to react to the unique circumstances that may relate to warehouses; however, the opportunity to adjust the number of jobs for a use should be permitted for many uses such as factories, bleachers, and similar structures which are highly-variable in job production.

RESPONSE: The Council considers waivers to its rules pursuant to waiver criteria enumerated in N.J.A.C. 5:96-15. For example, if a municipality seeks to submit actual jobs, they may submit documentation used to obtain financing for operations, that is, business plan or like documentation. This can be submitted in the form of a certification from the developer or business owner if one exists. The municipality may submit this data at petition if they are submitting actual jobs to date. Otherwise, the municipality may submit actual data at annual monitoring if the actual growth that occurs from non-residential development is there is a 10 percent difference in the number of jobs determined through the Appendix D jobs to square footage ratio. The municipality can submit documentation for each non-residential development where it is challenging the number of jobs determined through the use of the Appendix D jobs to square footage ratio.

COMMENT: A continuing care retirement community (CCRC) consists of a unique blend of components and services which actually fall under the R2, A3 and I2 Use Groups, and, as such, should be more appropriately listed as a completely separate category in Appendix D of the proposed rule amendments. CCRCs consist of an innovative, unique blend of components and services which comprise a hybrid of UCC Use Groups. Erickson's prototype CCRC, for example, consists of 1,500 independent living units which fall under the R2 Use Group. Although these independent living units resemble apartments in a multi-family building, there are notable differences. A CCRC should, in summary, be placed into the R2 Use Group, and be described as, "a continuing care retirement community including all constituent components, such as assisted living units, skilled nursing facilities and community facilities."

RESPONSE: The rule was amended to classify continuing care retirement communities (CCRC), which are coded R2, as generating a non-residential obligation only. They are currently treated as R1 uses for the purpose of estimating job growth. However, in the case of mixed-use development, such as in the scenario described by the commenter, the jobs calculation will be assigned in proportion to the square footage of each use in the mixed use development. For example, a CCRC that receives a certificate of occupancy under use group R2, but that includes 20,000 square feet of I2 use group space, 10,000 square feet of A3 use group space, and 100,000 square feet of R2 residential space, would calculate the growth associated with each use group using the ratio for that use group, that is, $1.6/1000 \times 20,000$ square feet I2 + $2.6/1000 \times 10,000$ square feet A3 + $1.7/1000 \times 100,000$ square feet R2.

N.J.A.C. 5:97 Appendix E

COMMENT: The change to the affordability average requirement subjecting fewer developments to the 52 percent standard is not necessary. Developments that received approvals seven years ago and still have not been constructed necessarily will have to be financed in a different way than the pro forma for the development assumed at the time of approval, as assumptions used for a project in 2001 cannot be used now in many categories. These developments should be subject to the 52 percent standard.

[page=6039] RESPONSE: The rule was amended to provide more flexibility to municipalities for the crediting of affordable units. In many instances developers go in for approvals with the understanding that the affordable units must comply with the criteria of the rules in effect at the time of approvals. It is the intent of the rule that municipalities will receive credit according to the criteria in place at the time. Under the amendment, the date a municipality petitioned the Council would no longer be relevant with regard to pricing of units, controls on affordability, etc. When a developer obtains approvals, the current rule governing these provisions is what would be applicable to that development.

N.J.A.C. 5:97 Appendix F

COMMENT: The commenter supports making environmentally sensitive properties off limits.

RESPONSE: The Council appreciates the commenter's support.

COMMENT: The analysis of vacant land in New Jersey states that the impacts of environmental constraints on the development of vacant lands across the State cannot be determined until municipalities implement the pending Waste Quality Management Act Rule and choose to conform with the Highlands Regulations or not. Therefore, the amendments should not yet be considered or adopted by COAH.

RESPONSE: COAH's consultants updated the study in April to include zoning and other information provided by the New Jersey Highlands Council, and lands in the Preservation Area were constrained pursuant to DEP rules issued under the Highlands Act. However, some communities in the Preservation Area have large numbers of exempt parcels under the Act that can be developed with single family homes. The commenter should note that Governor Corzine signed Executive Order No. 114 (2008) under which the Council and the Highlands Council have been directed to enter into a memorandum of understanding (MOU) within 60 days. Part of this MOU will establish an agreed upon extension of time to be granted to Highlands municipalities that opt in to the Highlands Regional Master Plan.

COMMENT: The proposal seeks to amend municipal level household and employment projections to reflect the DEP WQMP rules, zoning data for municipalities in the Highlands and actual growth in a municipality. The reliability of this data, however, is suspect and dependent on a flawed methodology. As before, since the agency did not provide data upon adoption of the proposal and only later posted the data on its website after numerous OPRA requests from municipalities, these local governments have not been given adequate time to refute these projections. Furthermore, it must be asked why such amendments were only made for Highlands municipalities?

RESPONSE: COAH's consultants updated the study in April to include zoning and other information provided by the New Jersey Highlands Council, and lands in the Preservation Area were constrained pursuant to DEP rules issued under the Highlands Act. However, some communities in the Preservation Area have large numbers of exempt parcels under the Act that can be developed with single family homes. The commenter should note that Governor Corzine signed Executive Order No. 114 (2008) under which the Council and the Highlands Council have been directed to enter into a memorandum of understanding (MOU) within 60 days. Part of this MOU will establish an agreed upon extension of time to be granted to Highlands municipalities that opt in to the Highlands Regional Master Plan. The Council and its consultant decided to use Highlands zoning information in the updated analysis because of the many public comments received from Highlands communities and the Highlands Council itself that the capacity estimates provided by Rutgers University did not adequately consider the pending Regional Master Plan and supporting information that was publicly available on the Highlands web site. In doing so, the Council and its consultant treated the lands governed by the three regional State agencies - Meadowlands, Pinelands and Highlands--equally, and differently than other lands in the State with regard to zoning uses and densities. This decision was based on these agencies having been delegated, through specific legislation, responsibility to develop balanced regional approaches to land use, environmental protection and equity.

COMMENT: COAH has relied upon two reports to project the affordable housing needs for municipalities. These two reports are clearly in conflict with one another resulting in erroneous municipal affordable housing projections.

Inconsistency between the two principal reports upon which COAH based its calculations of projected municipal housing obligations occurs in municipalities throughout the state where the projection of residential units and employment in the Econsult Report far exceeds the vacant land capacity as determined in the Rutgers Report.

RESPONSE: The Econsult allocation of projected residential units explicitly and fundamentally considers the vacant land capacity as determined in the "Rutgers Report." In the Econsult allocation, housing units and employment are not permitted to exceed the capacity constraints.

COMMENT: For those communities that do not have excess affordable housing, an inflated growth share may well translate into an inflated amount of inclusionary zoning in order to accommodate the COAH forecast. As a result of such compliance efforts, a municipality that would not have otherwise grown substantially will have development approvals or entitlements resulting from such zoning that will color the future land use complexion of the community.

RESPONSE: Municipalities are required to construct affordable housing in relation to its market-rate growth. To ensure that there will be opportunity for affordable housing in a given municipality, towns are required to submit a plan to COAH which will sufficiently plan or zone to its projection. Municipalities may choose from a variety of mechanisms, including municipal construction, accessory apartments, other innovative programs, inclusionary zoning etc. Inclusionary zoning is only one such mechanism available to a municipality.

COMMENT: The proposed regulation does not take into account historic preservation factors contrary to the explicit language of the FHA. In addition, the proposed regulation does not take into account the explicit provisions of the Act in that it will destroy farmland that the State, county and town have already purchased. And it is equally clear that the proposed regulation does not take into account the fact that it will drastically alter the established patterns of development and result in costs prohibitive to the citizens of Cranbury in violation of the FHA.

RESPONSE: In preparing the vacant land analysis, COAH's consultant used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection, Pinelands Commission and New Jersey Highlands Council. All publicly and privately-owned open space, parks, preserved farmlands, etc. contained in these various databases were removed and not included as vacant land. COAH believes that its methodology is in full compliance with the Fair Housing Act.

COMMENT: How were Uniform Construction Code (UCC) Use Groups applied to existing municipal zoning in determining accurate non-residential growth share for each municipality in the State?

RESPONSE: As described in Section 4.0--Land Capacity Analysis--of the Rutgers University Report of May 2, 2008, COAH's consultants did not have access to and thus did not use municipal zoning information in estimating residential and non-residential development capacity for each municipality.

COMMENT: How were certificates of occupancy and past growth trends confirmed for accuracy with each municipality in determining projected residential growth share?

RESPONSE: The municipal-level housing data have been updated through 2006 using certificate of occupancy information and information on demolitions, and employment data have been updated using 2006 data from the New Jersey Department of Labor and Workforce Development. As a result, COAH has calculated new growth rates for the 1993-2006 period based on the updated data, and has recalculated the S-curves for each COAH region for both housing and employment. These growth projections are long-term projections, and they may run counter to short-term growth trends experienced by a municipality. The commenter should be aware that Certificate of Occupancy information comes from the Division of Codes and Standards in the New Jersey DCA. Every month, construction officials submit reports on building permits and certificates of occupancy. Information from these permits and certificates provide useful indicators on the level of construction activity in the State, the type of structures that are built, the number of dwelling units authorized for construction and completed. Certificates of occupancy give indicators on the end of the construction

process, when buildings are [page=6040] completed and ready for occupancy. Construction data are one of the few indicators available from every town every month. A demolition permit authorizes the removal of an existing building. A construction official may issue a demolition permit for a residential or nonresidential structure. For demolitions that result in the loss of a dwelling unit (a house or apartment), the State reports the number of dwellings lost.

COMMENT: COAH's consultant report entitled "New Jersey Council on Affordable Housing Task 1--Allocating Growth to Municipalities" provides an inaccurate and artificially high employment projection of 1,686 jobs for Delanco Township, Burlington County. When compared to the negative job loss projection in COAH's 2004 adopted regulations, the addition of 1,686 new jobs in the third round in the Township is unrealistic.

RESPONSE: Several municipalities have indicated that they believe they have significantly less development capacity than the amount ascribed to them in the COAH Task 1 report. The amount of development capacity for each municipality was determined using a consistent, Statewide method, prepared by the National Center for Neighborhood and Brownfields Redevelopment (NCNBR). This method specifically includes consideration of the current Water Quality Management Rules. Specifically, the vacant land analysis is based on a detailed GIS analysis at the sub-municipality level. This analysis provides estimates of the potential number of housing units and the square footage of nonresidential floor space (by major types of office, retail, warehouse/industrial, and blended) that each municipality may potentially develop after 2002. These estimates are essentially "build-out" constraints for each municipality. The employment growth projections cover a long range period, and are based on historic growth rates as well as "S-curve" growth rates that account for how built-out the township is. The projection of 4,263 jobs in 2018 is lesser than the number of jobs in 2018 that are implied by the township's historic growth rate (4,643) and greater than the number of jobs in 2018 that are implied by the township's "S-curve" growth rate (3,455). Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which time these differences can be analyzed and necessary adjustments made.

COMMENT: Based upon the analysis of seven years of growth provided in the Township's Growth Share Adjustment Report, COAH has significantly overestimated the amount of residential and nonresidential growth that will occur in Mantua Township between 2004 and 2018. As a result of these erroneous projections and other flawed assumptions discussed in the Report, COAH has grossly overestimated future growth and should correct its projections up front.

RESPONSE: The municipal projections from the allocation model reflect patterns of municipal growth as observed in the past tempered by the amount of vacant land available for future development. The updated growth projections are based on municipal level housing and employment growth observed over the period from 1993 through 2006. The sample period is long enough to capture both periods of strength and weakness in the local economies and the projected growth is consistent with patterns observed in the past. The growth forecast uses "S-curves", which account for the relationship between a municipality's growth rate and how close to build-out the township is. COAH has calculated S-curves based on the 1993-2006 historic growth, and the capacity limits that were in place in August 2007, before the revised Water Quality Management Rules were put forth. This method allows the S-curves to be consistent with the amount of land that was thought to be available at the time the growth was occurring. However, when running the current forecasts, COAH used updated capacity limits that do consider the new Water Quality Management Rules. This is appropriate because the revised capacity will impact future growth, but not past growth. The commenter should be further aware that the data used to calculate historic growth rates have been updated through 2006. The municipal-level housing data have been updated through 2006 using certificate of occupancy information and information on demolitions, and employment data have been updated using 2006 data from the New Jersey Department of Labor and Workforce Development. As a result, COAH has calculated new growth rates for the 1993-2006 period based on the updated data, and has recalculated the S-curves for each COAH region for both housing and employment. Also, growth constraints have been updated since the January 2008 COAH Task 1 report to account for the most recent Water Quality Management Rules. These rules further limit growth on more environmentally sensitive areas, and these new limits have been incorporated into the latest projections. In addition, these growth projections are long-term projections, and they may run counter to short-term growth trends experienced by a municipality. The commenter should be aware that

employment growth projections cover a long range period, and are based on historic growth rates as well as "S-curve" growth rates that account for how built-out the township is. For Mantua, the projection of 14,000 jobs in 2018 is lower than the number of jobs in 2018 that are implied by the township's historic growth rate (19,126) and greater than the number of jobs in 2018 that are implied by the township's "S-curve" growth rate (10,658). Further, the projection of 6,603 housing units in 2018 is lower than the number of units in 2018 that are implied by the township's historic growth rate (7,259) and by the township's "S-curve" growth rate (7,238). Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which time these differences can be analyzed and necessary adjustments made.

COMMENT: Mantua has reviewed all of the data that COAH has made available to the public and is unable to mathematically verify any of the projections. The data and reports give no clear indication as to how COAH and their consultants arrived at the growth projections that all municipalities must rely upon. In order to maintain confidence in the system geared towards creating affordable housing through sound planning, COAH should have provided all the data it relied upon at the time it proposed its regulations, and that information should have been presented in a manner that was intelligible and capable of verification. COAH's failure to do so hampers the kind of detailed analysis that might reveal still further flaws that require correction.

RESPONSE: As indicated in the report, the forecast model allocates county-wide projected growth among all the municipalities in a county. COAH projects growth for each municipality based on historic growth rates, including consideration of how close to build-out the municipality is, subject to the constraint that growth in all the municipalities in a county must sum to the projected county control total. The municipal level projections sum to the county totals because the county totals are the best available long term employment and housing projections available for the whole State. However, these projections are only available at the county level, and not the municipal level. There are instances in which there is insufficient land in the municipality to accommodate all the projected growth. In these instances, the growth beyond what the municipality can accommodate spills over into neighboring municipalities. In addition, the Task 1 report identifies the method used to prepare the allocations, which is further described below.

The employment model and the housing model are similar in structure to each other. The employment model, and the housing model work the same way, except for the use of the ratio of population to housing units, for which an example is shown.

Data

The majority of the input data for this model are employment data. These include the 1993, 2002, and 2006 municipal employment levels and the NJDLWD 2018 projected county employment levels. As indicated in Section 3 of the Appendix F Task 1 report, the State government sector is not reported anywhere at the municipal level, so this employment allocation model only covered three sectors: private employment, federal government, and local government. State government employment will be discussed separately. The other input data is non-residential build-out constraints.

Converting Floor Space to Employment

The physical growth capacity in this model is based on the data generated by the NCNBR vacant land study. The data are expressed in terms of gross floor area and are broken down into office, retail, warehouse/industrial, and others/blended for almost all municipalities.

When testing whether the future growth limit is reached with the projected employment level, it is important to translate the gross floor space into employment. Task 4 includes a literature review and a sample survey for New Jersey on employee/floor space ratios by type of uses. [page=6041] Here are the ratios (in terms of number of employees per 1,000 square feet of gross floor space) COAH's consultants initially recommended in Appendix F Task 4:

- -- Office 3.32
- -- Retail 2.00
- -- Warehouse 1.72
- -- Manufacturing and Industry 1.43

These ratios could be sensitive to the estimated amount of employment based on the potential nonresidential development, so all chosen ratios in the employment allocation model were within the upper and lower bound of those recommended by Task 4. Using an adjustment of 8 percent for vacancies and 15 percent for common areas this translates to 2.25 employees per 1000 square feet. This ratio was not identical for all municipalities because their current mix of commercial space varies by municipality.

Growth Rates

Historic growth rate

The historical growth rate is calculated using the 1993 to 2006 employment numbers. Statewide, the historical employment growth rate (excluding the State government sector) is approximately 1.3 percent between 1993 and 2002, but some municipalities experienced annual rates over 15 percent in this period. While the majority of such municipalities had a very small employment base in 1993, some mid-size municipalities (with 1993 employment around 2,000 jobs) like Allendale Borough in Bergen County, Swedesboro Borough in Gloucester County, and Monroe Township in Middlesex County, had annual rates exceeding 15 percent. In other words, these municipalities more than doubled their employment primarily due to new development. Such fast employment growth rates are unlikely to sustain, especially when their growth capacity is being used up. Because of this possibility, COAH's methodology uses a combination of the historical growth rate and the "S-curve" growth rate, which is discussed below.

S-curve, or build-out, growth rate

The "build-out growth rate," also called the "S-curve growth rate," is econometrically estimated by a cross-sectional regression of 1993 to 2006 municipal employment growth as a function of the percentage of the total possible build-out that had already occurred in 1993. As expected, this estimation--discussed in greater detail in Appendix 1 of the chapter Appendix F report, "Allocating Growth to Municipalities"--reveals that growth slows as municipalities approach their build-out capacity.

Procedure

This is an iterative model with a starting point based on historic growth rates, a sequence of intermediate calculations, and a final result. The intermediate steps account for the county control total, the maximum municipal level growth rate, and the capacity of a municipality to accept growth.

In the first step, the initial municipal employment by 2018 was projected based on the average of the historical growth rate and the S-curve Growth Rate. This average is called the "Mean Growth Rate." These rates are indicated in columns [3] - [5] in Table 1 below, and the initial projections are shown in column [7].

Note that in the example, the historical growth rate is negative for seven municipalities in Salem County. However, the build-out growth rate (the "S-curve growth rate") is positive for all municipalities so that the mean growth rate is positive for all but two municipalities.

These initial projections were summed at the county level and compared to county control totals. If the sum of the initial projections for a county exceeds the county control total for the county, the employment of each municipality is

scaled down. In the example shown in Table 1, the Initial 2018 Employment Projection is 33,198 jobs, and the county control total is 25,918. This indicates that the initial projections, based on municipal growth information, are too great, and that they need to be scaled back.

The growth of each municipality is also measured against its physical growth capacity (shown in column [10]) to ensure that the build-out level did not exceed 100 percent of its physical development capacity. Each municipality's implied growth rate, was also compared to its maximum growth rate, which is either the historical rate or the S-curve growth rate. In the example, three communities, Elmer Borough, Pilesgrove Township and Pittsgrove Township, have initial projected growth that exceeds the capacity of the municipality. These townships have negative numbers in column [11], which indicates that there is less capacity than there is projected growth. These municipalities are candidates for generating spillover.

The spillover was then estimated and sent to those adjacent municipalities that had the capacity to receive the spillover, either in the same county or out of county. This movement of jobs creates a new estimate of growth for each municipality, and any of the three constraints (county control total, municipal level capacity, and municipal level maximum growth rates) could be violated. The model needs to check the constraints again for each municipality, and make adjustments, and then check again, and make more adjustments. This is the iterative part of the algorithm.

In each round of the allocation of the spillover, each receiving municipality was checked to ensure that the growth increment did not violate the two growth constraints of the model (growth capacity and maximum growth rate).

For counties that had a sum of initial projected employment less than the county control totals, their municipalities would receive cross-county spillover under the same set of constraints. The county total was then compared to the control total. If the county total was still below the control total, the municipality employment was scaled upward and the spillover allocation procedures followed.

This iterative process resulted in a municipal allocation that summed to within 0.4 percent of the total Statewide employment. Each county was close to its control total as well. The remaining 0.4 percent of employment was allocated by proportionately scaling up or down municipalities in each county such that the projections summed to the county control totals exactly and neither the growth rate nor build-out constraints were violated.

For example, in Salem County the initial 2018 employment projection was greater than the 2018 county control total employment projection. Additionally, the initial employment projection exceeded the total physical growth capacity in 2018 in three municipalities. After scaling to the county controls, allocating the resulting spillover from Salem County and other counties, and numerous iterations, the final allocation met the county control total and was below the total physical growth capacity. The final allocation is indicated in column [12] of the example, the capacity is in column [13], and the amount of capacity remaining in 2018 is shown in column [14].

Housing Model

As mentioned previously, the housing model follows the same algorithm as the employment model. However, since NJDLWD provides only the population projections, and not housing unit projections, the starting point (1993 housing units) must first be calculated using population to unit ratios from the 1990 and 2000 census and the 1993 population projection from the NJLWD. Table 2 below shows an example from Pittsgrove Township in Salem County. The 1990 and 2000 population to unit ratios are shown in rows [1] and [2] of Table 2. These ratios are interpolated to determine the 1993 population/unit ratio, which is shown in rows [3] to [5]. The 1993 population forecast is divided by this ratio to arrive at the 1993 units. This is the starting point for the calculation of the growth rates. As discussed in the Task 1 report, the ending point is 2006 housing unit information, which was determined using 2000 census information on units, adding in new units as determined by certificates of occupancy, and removing demolished units as determined by demolition certificates. Additionally, the 2000 population to units ratio was set as a constant to determine population projections in the housing model.

Thereafter, the historic, S-curve, and mean growth rates were calculated in the same fashion as the employment model. These rates are shown in rows [11] through [13].

| Table 1: Salem County Employment - Growth Rates, Initial Projections and Final Allocation | | | | | | | | | | | | | |
|---|------------|------------|-------------|-------------|-------------|------------|--------------|-----------------|-----------------|----------------|---------------|---------------|---------------|
| | | | | Annual G | rowth Rates | | | | | | | Final | |
| | | | | | | | | | | | Available | | |
| | | | | | | | | | | Total Physical | Capacity in | allocation in | Total Physics |
| | | | | | | | Initial 2018 | | Post-2002 | Growth | 2018 based on | 2018 after | Total Physica |
| | 1993 | 2002 | Historical | S-curve | Mean Growth | 5006 | Employment | Total Empoyment | Physical Growth | Capacity in | hitial | multiple | Growth |
| Municipality | Employment | Employment | Growth Rate | Growth Rate | Rate | Employment | Projection | 2018 Projection | Capacity | 2018 | Projection | iterations. | Capacit |
| | [1] | [2] | [3] | [4] | [5] | [6] | 77 | [8] | [9] | [10] | [11] | [12] | (13 |
| Alloway Township | 352 | 610 | 7.9% | 3.1% | 5.5% | 713 | 1,185 | | 1,761 | 2,391 | 1,206 | 907 | 2,391 |
| Carneys Point Township | 1,508 | 2,095 | 7.6% | 3.7% | 5.8% | 2,992 | 5,011 | | 14,655 | 16,710 | 11,899 | 4,048 | 16,710 |
| Elmer Borough | 1,415 | 1,573 | 1.5% | 0.2% | 0.8% | 1,697 | 1,869 | | 185 | 1,758 | (111) | 1,697 | 1,758 |
| Elsinboro Township | 513 | 137 | -6.6% | 3.6% | -1,4% | 76 | 64 | | 12 | 149 | 85 | 76 | 149 |
| Lower Alloways Creek Township | 1,959 | 982 | -5.8% | 3.9% | -0.9% | 470 | 416 | | 2,013 | 3,006 | 2,589 | 470 | 3,006 |
| Mannington Township | 1,234 | 971 | -2.3% | 3.5% | 0.6% | 872 | 938 | | 2,806 | 3,777 | 2,639 | 872 | 3,777 |
| Oldmans Township | 626 | 693 | -2.3% | 3.7% | 0.7% | 582 | 631 | | 2,399 | 3,092 | 2,461 | 582 | 3,082 |
| Penns Grove Borough | 1,227 | 1,141 | -0.6% | 1,4% | 0.4% | 1,133 | 1,191 | | 447 | 1,588 | 397 | 1,133 | 1,588 |
| Pennsylle Township | 5,206 | 4,278 | -1.8% | 2.5% | 0.3% | 3,960 | 4,113 | | 3,710 | 7,988 | 3,875 | 3,960 | 7,968 |
| Pliesgrove Township | 273 | 1,007 | 24.1% | 1.6% | 12.8% | 1,129 | 2,668 | | 723 | 1,730 | (1,138) | 1,528 | 1,730 |
| Pittsgrove Township | 920 | 2,781 | 17.7% | 1.3% | 9.5% | 3,042 | 6,523 | | 1,543 | 4,324 | (2,199) | 3,777 | 4,324 |
| Quinton Township | 175 | 148 | -0.5% | 4.2% | 1.8% | 163 | 199 | | 2,626 | 2,774 | 2,575 | 178 | 2,774 |
| Salem City | 2,939 | 3,151 | 0.8% | 1.9% | 1.4% | 3,262 | 3,798 | | 2,506 | 5,657 | 1,859 | 3,370 | 5,657 |
| Upper Pasgrove Township | 515 | 1,010 | 11.4% | 2.5% | 7.0% | 1,280 | 2,353 | | 1,952 | 2,962 | 609 | 1,516 | 2,962 |
| Woodstown Scrough | 1.668 | 1,690 | 0.5% | 1.6% | | 1,767 | 2,039 | | 1,300 | 2,990 | 951 | 1,804 | 2,990 |
| Total | 20.752 | 22.227 | | | | 25.152 | 93 166 | 25 948 | 38 658 | 60.896 | 27 697 | 25.918 | 60.895 |

| Se | loures: | | | |
|-----|--|--|--|--|
| [1] | 1] 1993 Employment :NJLWD | | | |
| 12 | 2 2002 Employment : NJL WD | | | |
| [3 | 3 Historical Growth Rate: Yearly Growth from 1993 to 2006 | | | |
| 14 | S-curve Growth Rate: 1993 to 2006 (See Appendix A in Final Report) | | | |
| 15 | Mean Growth Rate : Average of Historical Growth Rate and S-curve Growth Rate | | | |
| 围 | initial Employment Projection : 2006 Employment * [1+(mean growth rate * 12)] | | | |
| 17 | 7] NJLWD | | | |
| 181 | 利 - Mi | | | |
| [9] | 9] Post-2022 Physical Growth Capacity: | | | |
| t i | 10] Total Physical Growth Capacity: Post-2002 Physical Growth Capacity + 2002 Employment | | | |
| Į. | [1] = [10] - [7] | | | |
| | 12] Task 1 Report | | | |
| | 13] = [10] | | | |
| fr. | (4) = (27) - (47) | | | |

Click here for image

[page=6043] **Table 2**

Calculation of Growth Rate for Pittsgrove Township

| | | Population | Units | Population/ Units |
|-----|---|------------|-------|----------------------|
| [1] | 1990 | 8,121 | 2,788 | 2.91 |
| [2] | 2000 | 8,893 | 3,155 | 2.82 |
| [3] | Difference between 1990 and 2000 pop. /unit ratio | | | -0.094 |
| [4] | Annual change in population /unit ratio | | | -0.032 |
| [5] | 1993 Population /unit ratio | | | 2.89 |

| [6] | 1993 Population | 8,417 |
|------|------------------------------------|-------|
| [7] | 1993 Units | 2,918 |
| [8] | 2006 Units | 3,469 |
| [9] | 2006 Units - 1993 Units | 551 |
| [10] | Percent Increase from 1993 to 2006 | 19% |
| [11] | Historical Growth Rate | 1.5% |
| [12] | S-curve Growth Rate | 0.5% |
| [13] | Mean Growth Rate | 1.0% |

COMMENT: The growth projections for Warren Township are inconsistent with all prior forecast prepared by NJTPA, Bureau of Census, Somerset County planning Board and the Township. The most astounding projection is for a total of 3,346 new jobs to be created in the Township by the year 2018. The Township believes the database from which this projection was developed is invalid. The circumstance in Warren Township was the vacation by Lucent Technologies of a corporate campus headquarters where in at peak occupancy approximately 3,800 employees worked and the re-occupancy of the same facility by Citigroup in the period 2002 through 2003 of a lesser number of employees (approximately 2,800). The Township of Warren is one of a handful of communities in the State of New Jersey that has met and exceeded its affordable housing obligation for rounds one and two. As a result of implementation of its plan, the Township has grown from a community of roughly 7,500 persons in the 1990s to over 16,000 persons today. A substantial portion of the township's population growth (a doubling of its population) is directly the result of affordable housing obligation strategy implementation. The prospect of continued massive housing production on very limited remaining vacant developable land is not rational.

RESPONSE: Several municipalities have indicated that they believe they have significantly less development capacity than the amount ascribed to them in the COAH Appendix F Task 1 report. The amount of development capacity for each municipality was determined using a consistent, statewide method, prepared by the National Center for Neighborhood and Brownfields Redevelopment (NCNBR). This method specifically includes consideration of the Highlands Act and the current Water Quality Management Rules. Specifically, the vacant land analysis is based on a detailed GIS analysis at the sub-municipality level. This analysis provides estimates of the potential number of housing units and the square footage of nonresidential floor space (by major types of office, retail, warehouse/industrial, and blended) that each municipality may potentially develop after 2002. These estimates are essentially "build-out" constraints for each municipality. In preparing the vacant land analysis, COAH's consultants used the most currently available statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of

what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. Municipalities have the ability to seek a vacant land adjustment through the COAH certification process, at which these differences can be analyzed and necessary adjustments made.

COMMENT: The Allocating Growth report states "In very rare instances in which historical growth rates have been unsustainably high, primarily because they are starting from a low base, we have exogenously forced growth to slow from the historical rate." Based on an OPRA request, we understand that this is true of only one municipality, Woolwich Township, where the historic growth rate was 14.6 percent and the projected growth rate only 0.7 percent. On what basis did COAH create this exception for only one town? And how was the projected growth rate determined to be only 0.7 percent, one-twentieth of the historic growth rate?

RESPONSE: In most instances, the growth rates used in the model are a combination of the historic growth rate and the "S-curve" growth rate implied by how built out the township is. Woolwich Township's historic growth rate was unrealistically high, so the historic growth rate was not considered in the model for this township, and thus the growth rate used was the "S-curve" growth rate. Excluding Pine Valley Borough, which had only 45 units in 2006 and thus starts from a very small base, Woolwich's growth rate was approximately three times as great as the next fastest growing township, Mansfield Township.

COMMENT: Please clarify whether the employment allocation model was adjusted to use the new, lower 1.0 job per 1,000 square foot ratio for warehouses proposed in these amendments. If this ratio were not used, it would result in inconsistent calculations in translating growth share into employment, meaning that the model would overproject the amount of employment resulting from growth in warehouse floor space.

RESPONSE: The allocation model uses the number of new jobs a municipality can accommodate as an input, and does not directly use the ratio of jobs per square feet to allocate jobs across municipalities. The number of new jobs a municipality can accommodate is determined by the potential for additional non-residential floor space in each municipality. The calculation of the exact number of jobs depends on the mix of structure types in each municipality. The jobs per 1,000 square foot ratio used for warehouses was 0.8 so the result modestly under-projects the amount of employment resulting from growth in warehouse floor space.

COMMENT: In Appendix F, Task 1--Allocating Growth to Municipalities, Section 3.3, it is reported that at the rate of described growth, the State will gain about 19,246 housing units per annum. Please set forth the math to derive that number, as it cannot be calculated from any of the numbers provided. It appears to be a math error.

RESPONSE: The net change from 2004 to 2018 is 269,448. Over a period of 14 years, this is a net change of 19,246 units per year.

COMMENT: Are we requiring these units to be built based on counting illegal immigrants in our population? Because those people should be deported and not be counted as population of the United States.

RESPONSE: The comment is outside the scope of this rule proposal.

COMMENT: In Appendix F, Task 1--Allocating Growth to Municipalities, Section 3.3, there is a reference that between 2004 and 2018 the net increase in housing will be 269,952 units for a total growth of eight percent. There is a problem with the math. Subtracting 3,428,504 units from 3,697,952 units, results in 269,448, not 269,952, and neither number represents a total growth of eight percent.

RESPONSE: Table 3.1 shows 3,428,504 units in 2004, 3,697,952 units in 2018, and a net increase of 269,448. The citation of 269,952 in the paragraph preceding Table 3.1 is an editing mistake and has been [page=6044] replaced with the correct total, 269,448, to match the table. The 2018 number of units is 7.86 percent, rounded to eight percent, greater than the 2004 number of units.

COMMENT: We question whether any of the forecast non-residential growth in Bedminster was a result of reallocation of the growth that could not be otherwise accommodated in other communities and was thus reassigned to Bedminster. We request that COAH identify whether in fact this reallocation has occurred, since the implications of requiring new non-residential zoning in the almost fully built-out highway corridor run directly counter to the long term land use policies of Bedminster Township.

RESPONSE: Bedminster had 6,797 jobs in 2006, and has a capacity for 15,710 jobs, or almost 9,000 jobs more than it had in 2006. The 2018 projection is for 9,540 jobs, and the historical and S-curve growth rates implied a total of 9,472 jobs and 9,527 jobs, respectively. This implies that there was spillover into Bedminster, or the municipal projections were increased to match the county control total. If all of the municipalities in Somerset County had increased based on their historic growth rates, the county total would have been 3.6 percent too high relative to the county control total. If all of the municipalities had increased based on the S-curve growth rates, the county total would have been 0.6 percent too low relative to the county control total. Given the numerous constraints imposed on the model, and the fact that the model iterates to reach a solution, there is no definitive answer to whether or not a specific community received spillover or if the result reflects the adding up constraint.

COMMENT: The employment projections included within Appendix F, Part 2 predict that an unrealistically high number of jobs will be created during the 2004-2018 time period. Appendix F, Part 2 of N.J.A.C. 5:97 includes a projection of a net change in employment growth of 4,613 jobs during the 2004-2018 time period for Hillsborough Township. In comparison, the non-residential growth share calculation based upon the Township's data yields a non-residential growth share projections of 2,098 jobs during the 2004-2018 time period. This represents a difference of 2,524 jobs between the two projections. Additionally, the projection based upon the Township's data includes the conservative assumption that the Township will continue to add 139 jobs per year during the 2009-2018 time period, which represents a continuation of the average rate of growth that the Township experienced during the 1996-2007 time period. In sharp contrast, the 4,613 jobs projected by COAH would require the Township to experience a rate of growth of 307.5 jobs per year during the 2004-2018 time period, which would require the Township's rate of employment growth to increase by more than 100 percent. Clearly, COAH's projection does not accurately represent the number of jobs that could reasonable be expected to be created within Hillsborough during the 2004-2018 time period. Therefore, COAH should give municipal data a presumption of validity and permit municipalities to rely on their own data to calculate their non-residential growth share obligations.

RESPONSE: The municipal projections from the allocation model reflect patterns of municipal growth as observed in the past tempered by the amount of vacant land available for future development. The updated growth projections are based on municipal level housing and employment growth observed over the period from 1993 through 2006. The sample period is long enough to capture both periods of strength and weakness in the local economies and the projected growth is consistent with patterns observed in the past. The growth forecast uses "S-curves," which account for the relationship between a municipality's growth rate and how close to build-out the township is. COAH has calculated S-curves based on the 1993-2006 historic growth, and the capacity limits that were in place in August 2007, before the revised Water Quality Management Rules were put forth. This method allows the S-curves to be consistent with the amount of land that was thought to be available at the time the growth was occurring. However, when running the current forecasts, COAH used updated capacity limits that do consider the new Water Quality Management Rules. This is appropriate because the revised capacity will impact future growth, but not past growth. The commenter should be further aware that the data used to calculate historic growth rates have been updated through 2006. The municipal-level housing data have been updated through 2006 using certificate of occupancy information and information on demolitions, and employment data have been updated using 2006 data from the New Jersey Department of Labor and Workforce Development. As a result, COAH has calculated new growth rates for the 1993-2006 period based on the updated data, and have recalculated the S-curves for each COAH region for both housing and employment. Also, growth constraints have been updated since the January 2008 COAH Appendix F, Task 1 report to account for the most recent Water Quality Management Rules. These rules further limit growth on more environmentally sensitive areas, and these new limits have been incorporated into the latest projections. In addition, these growth projections are long-term

projections, and they may run counter to short-term growth trends experienced by a municipality. The commenter should be aware that, the employment growth projections cover a long range period, and are based on historic growth rates as well as "S-Curve" growth rates that account for how built-out the township is. The projection of 13,251 jobs in 2018 for Hillsborough is lower than the number of jobs in 2018 that are implied by the township's historic growth rate (14,515) and greater than the number of jobs in 2018 that are implied by the township's "S-curve" growth rate (12,160).

COMMENT: In Appendix F, Task 1--Allocating Growth to Municipalities, Section 3.3, just below the reference to the changes in housing units for 2002 and 2004, there is a reference that housing units in 2018 are projected to be 3,697,952 housing units. Please explain how that number was derived. I understand from the flow chart it is an average of the two growth rates, both historical and estimated cross-sectional. Please describe if it is a weighted average or not, provide the historical and estimated cross-sectional rates, the average of the two growth rates, and show the math with reference to the application of the growth rates to compute the increase in housing units.

RESPONSE: Housing units in 2018 are based on the Statewide calculation of population in 2020 prepared by the NJDLWD in 2006. COAH's analysis interpolated the population to 2018. This was converted into housing units by applying the ratio of population to housing units based on information from the 2000 Census.

COMMENT: In reference to Section 3.3 of Appendix F, Task 1--Allocating Growth to Municipalities, please provide the number of housing units the consultant discerned existed based on the 2000 Census, the source and number of Certificates of Occupancy considered, and the source and number of demolitions considered to arrive at a total of 3,385,302 housing units in 2002. Set forth the same information with reference to the computation for 2004.

RESPONSE: The total number of housing units in New Jersey based on the 2000 census was 3,310,275. The source of the certificates of occupancy and demolition is the New Jersey Construction Reporter, in the Division of Codes and Standards in DCA. All of their data is available at the following location: http://www.state.nj.us/dca/codes/cr/conrep.shtml.

COMMENT: In Appendix F, Task 1--Allocating Growth to Municipalities, under Section 3.3 entitled Results, it is indicated there has been a change in approach in computing the number of housing units in New Jersey. The report issued in January used 2002 population numbers extrapolated from 2003 population, and applied the 2000 housing to population ratio to arrive at 3,373,490 housing units. If population was used, would not the proper reference be to households, and not housing units?

RESPONSE: The calculation was done using the ratio of population to housing units, not households, so the reference to housing units is correct.

COMMENT: In Appendix F, Task 1--Allocating Growth to Municipalities, it is indicated there is a change in the report to reflect that there are now five years of reliable municipal employment estimates, which now include 2004, 2005 and 2006. Does this mean that municipal employment estimates from NJDLWD for 2004, 2005 and 2006 were not used in connection with the study issued January 2, 2008 and the rules adopted June 2, 2008?

RESPONSE: The data used to calculate historic growth rates have been updated through 2006. The municipal-level housing data have been updated through 2006 using certificate of occupancy information and information on demolitions, and employment data have been updated using 2006 data from the New Jersey Department of Labor and Workforce Development. As a result, COAH has calculated new growth rates for the 1993-2006 period based on the updated data, and has [page=6045] recalculated the S-curves for each COAH region for both housing and employment.

COMMENT: With reference to Section 4.3 of Appendix F, Task 1--Allocating Growth to Municipalities, results for the employment allocation model, set forth with greater detail the mathematical calculations made to determine job growth of 818,898 jobs between 2004 and 2018. The request is made for the following reasons. The 2002 employment total is shown in the report, but the 2014 employment total is not shown. I assume the extrapolation to 2018 was on a straight line basis from 2002 to 2014, but to check that number one would need the 2014 employment number.

Additionally, to determine whether the absolute growth in employment between 2004 and 2018 is accurate, the report needs to set forth the 2004 employment number. The statement that the rate of total job growth is 22 percent, and 58,493 jobs per annum, from 2004 to 2018 cannot be verified based on the limited information provided. The report should set forth the complete numbers, and the mathematical basis which computed the numbers.

RESPONSE: Section 1.3.1 states, "NJLWD's Projections of Total Employment by County: 2004 to 2014 (http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi04/index.html#ind) provides tables of industry employment projections for each county in New Jersey." All of the 2004 and 2014 employment data is available from the New Jersey Department of Labor and Workforce Development. COAH's analysis was done on a county by county basis and the State figure is a sum of the counties.

COMMENT: Mendham is extremely concerned over the progressive and dramatic increase since 2005 in its Fair Share Obligation. The Borough submitted a Plan in December 2005 based on a growth share obligation of 12 units, a zero rehabilitation share and a fulfilled prior round obligation. The Round 3.2 projections give Mendham an 88-unit obligation under current rules and a 155-unit obligation under the proposed amendments. Using a 20 percent set-aside, the Borough would have to produce in the next 10 years 42 percent of its housing stock.

RESPONSE: The change in the projection is due to the updated data COAH received from DEP and the Highlands and. However, the commenter should be aware that the housing and employment projection reflects a number that the municipality must zone or plan to when it petitions for substantive certification. The eventual obligation depends on the growth that happens in the municipality.

COMMENT: The calculated allocation of growth to the municipalities still results in a greater number of units proposed than can and will actually be developed.

RESPONSE: Several municipalities have indicated that they believe they have significantly less development capacity than the amount ascribed to them in the COAH Appendix F, Task 1 report. The amount of development capacity for each municipality was determined using a consistent, statewide method, prepared by the National Center for Neighborhood and Brownfields Redevelopment (NCNBR). This method specifically includes consideration of the Highlands Act and the current Water Quality Management Rules. Specifically, the vacant land analysis is based on a detailed GIS analysis at the sub-municipality level. This analysis provides estimates of the potential number of housing units and the square footage of nonresidential floor space (by major types of office, retail, warehouse/industrial, and blended) that each municipality may potentially develop after 2002. These estimates are essentially "build-out" constraints for each municipality. The projections from the allocation model reflect patterns of municipal growth as observed in the past tempered by the amount of vacant land available for future development. The updated growth projections are based on municipal level housing and employment growth observed over the period from 1993 through 2006. The sample period is long enough to capture both periods of strength and weakness in the local economies and the projected growth is consistent with patterns observed in the past. The growth forecast uses "S-curves," which account for the relationship between a municipality's growth rate and how close to build-out the township is. COAH has calculated S-curves based on the 1993-2006 historic growth, and the capacity limits that were in place in August 2007, before the draft revised Water Quality Management Rules were put forth. This method allows the S-curves to be consistent with the amount of land that was thought to be available at the time the growth was occurring. However, when running the current forecasts, COAH used updated capacity limits that do consider the new Water Quality Management Rules. This is appropriate because the revised capacity will impact future growth, but not past growth. The data used to calculate historic growth rates have been updated through 2006. The municipal-level housing data have been updated through 2006 using certificate of occupancy information and information on demolitions, and employment data have been updated using 2006 data from the New Jersey Department of Labor and Workforce Development. As a result, COAH has calculated new growth rates for the 1993-2006 period based on the updated data, and has recalculated the S-curves for each COAH region for both housing and employment. Also, growth constraints have been updated since the January 2008 COAH Appendix F, Task 1 report to account for the most recent Water Quality Management Rules. These rules further limit growth on more environmentally sensitive areas, and these new

limits have been incorporated into COAH's latest projections. In addition, these growth projections are long-term projections, and they may run counter to short-term growth trends experienced by a municipality. Frankford Township is projected to grow to 2,779 units in 2018, which is only five units greater than the number of units in 2018 that are implied by the township's historic growth rate (2,774) and is less than the number of units in 2018 that are implied by the township's "S-curve" growth rate (2,965). Frankford Township is projected to grow to 1,016 jobs in 2018, which is only 23 jobs greater than the number of jobs in 2018 that are implied by the township's historic growth rate (993) and is less than the number of jobs in 2018 that are implied by the township's "S-curve" growth rate (1,127). Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which time these differences can be analyzed and necessary adjustments made.

COMMENT: The adopted rule requires municipalities to develop a plan to address the growth share obligation based on the Council's established projections. These growth share projections were partially based on historic growth trends occurring during the high-growth period 1993 to 2006. The proposed amendments only extend the historical period used by the consultant adding more high growth years to the calculation. The adopted rules depart substantially from the concept of growth share, to the point that it is not really growth share. The commenter fears that this approach to assigning statewide affordable housing need will result in top-down, forced growth that will be made to fit into whatever landscape remains. It is not the affordable housing obligation that would result from an organic, bottom-up growth, as it would result from adopted state and local plans.

RESPONSE: The Appellate Division in its 2007 opinion upheld the concept of growth share with certain limitations and COAH accordingly continues to use it in the methodology supporting the current amendments. The Council disagrees with the commenter that the methodology is a top down approach that will result in forced growth as the consultants in devising the methodology considered historic growth patterns at a municipal level in determining growth projections. Municipalities have the ability to meet affordable housing obligations through a number of mechanisms, one of which is inclusionary zoning. If a municipality chooses to implement inclusionary zoning, it should do so as part of a comprehensive master planning process, which will allow the municipality to maintain control of how development occurs within its borders.

COMMENT: Please explain why the language in Section 1.1 of Appendix F, Task 1--Allocating Growth to Municipalities, which reflects the estimates are projections into the future, and therefore actual growth will differ from the projections, is being deleted from the report. Is that statement no longer true? If it is no longer true, please explain how projections into the future can be exact.

RESPONSE: The sentence in question was removed as part of the final editing process. The Council believes this concept was sufficiently described in the rules and elsewhere in the report and, therefore, the sentence, although true, was repetitive.

COMMENT: The actual conditions and physical circumstances of Mendham Borough, specifically the historic character, critical environmental location and sanitary sewer and septic disposal limitations, point to a determination that the affordable housing obligations being imposed by the current rules and projected rules is excessive, arbitrary [page=6046] and unsupportable. COAH's broad-brushed econometric and statistical models which form the basis for the Borough's projected obligation fall well short of the detailed local analysis that is needed to make intelligent land use planning and zoning decisions for viable housing in the Borough.

RESPONSE: COAH has a Statewide mandate under the Fair Housing Act, and it is appropriate to use consistent Statewide data for projection purposes. The use of Statewide data allows the allocation method to apply equally and fairly to all municipalities in the state. There are no uniform criteria for determining which local data are appropriate to include in the employment and housing forecasts, so any attempt to incorporate local data would be ad hoc. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which time these differences can be analyzed and necessary adjustments made. The commenter should note that Governor signed Executive Order No. 114 on September 5, 2008, addressing the relationship between COAH and the Highlands

and has directed COAH and the Highlands to enter into an memorandum of understanding within 60 days, which will address the unique circumstances of Highlands communities, including Mendham Borough.

COMMENT: A failure to measure the net increase of residential growth violates the Appellate Division's decision, *In the Matter of the Adoption of 5:94 and 5:95 by the New Jersey Council on Affordable Housing*, 390 *N.J. Super.* 1, 65 (App. Div.), *certif. den.*, 192 *N.J.* 72 (2007), where the Appellate Division held that COAH must base its growth share methodology on actual, real growth within a municipality, and not based upon a formula or ratio. If an existing residential structure is demolished and replaced with only one residential structure, there has been no new growth. Therefore, COAH should measure the net increase in residential growth.

RESPONSE: The comment is outside the scope of the rule proposal.

COMMENT: The new rules are likely to leave the residents of affordable housing stranded in the suburbs. For instance, the number of jobs assigned to warehouses appears to be grossly over-estimated, causing inflated obligations in many suburban towns. This will result in a glut of affordable housing in towns with insufficient local employment opportunities to support the new residents. Furthermore, low-income workers are particularly vulnerable to layoffs. Therefore, affordable access to a multitude of employment opportunities is critical in our economy. In addition, increasing commuting costs make access to mass transit a necessity for low and moderate income families. For example, commuting by car from Cranbury to Newark costs twice as much as commuting by train from West Windsor; a difference of more than \$ 3,000 per year. It is counter-productive to leave low-income workers stranded in the suburbs with limited employment opportunities and limited access to mass transit. COAH should re-consider the obligations based on more accurate employment data. COAH should also reduce the obligations in towns without access to mass transit, or at least encourage towns to work regionally to ensure that affordable housing is built near mass transit.

RESPONSE: If a municipality is located within one of the five regional planning entities as defined in P.L. 2008, c. 26, that municipality may work with other municipalities within that regional planning entity to create affordable housing near mass transit and employment opportunities. COAH encourages municipalities to work with their regional planning entity to identify those opportunities for affordable housing. The Council also believes that the growth share methodology addresses the commenter's concerns and will not leave residents of affordable housing stranded in the suburbs. A municipality is required to submit a plan to COAH that will zone or plan its projection and create affordable housing in relation to the market rate growth, which includes residential and non-residential development. Therefore, if there are new employment opportunities happening in the community, affordable housing will be a part of that growth. Lastly, affordable units created in Planning Areas 1 or 2, or designated centers as part of a Transit Oriented Development are eligible for a Smart Growth bonus while affordable units in redevelopment areas are eligible for redevelopment bonuses.

COMMENT: In Appendix F, Task 1--Allocating Growth to Municipalities, under Municipal Employment Data, there is a reference that the NJDLWD, Municipal Employment Data after 1999 is not reliable until 2003. Please explain the reason why it is asserted the information after 1999 except for 2003 is not reliable. It is my understanding that municipal data was provided between 1993 and 1999, but not again provided until 2003. Is that the reason why it is asserted the information is not reliable again until 2003?

RESPONSE: The problem with the municipal level employment data is an issue of consistent coverage. In several cases, the category for Federal government employment was not reported for the years between 1999 and 2003.

COMMENT: Tewksbury's growth from 2004 to 2018 as prepared by the consultant appears substantially overestimated, as development experience does not suggest such growth. Under the adopted third round rules, Tewksbury Township's growth share affordable housing obligation more than triples, from 38 units to 117 units. The residential growth share has more than doubled, while the job-related growth share has increased eleven-fold compared to the initial round three rules. While the proposed amendments reduce Tewksbury's growth share (by approximately 13 percent), the third round growth share obligation is still more than twice the number of units included within the third

round plan submitted to the Council in 2005. The COAH rule amendments assume that 308 new or replacement homes will be built between 2004 and 2018. However, during the four years ending last December, Tewksbury issued 82 permits for new dwellings. Three-quarters (61) of these received COs in 2004 and 2005, reflecting the tail end of the inclusionary development occurring in Oldwick. If the 2004-2007 rates of new units persist until 2018, fewer than 300 new units would be built. However, if the 2006 and 2007 average of about 10 units per year is closer to the rate of growth for the remainder of the period, less than 200 units would be built between 2004 and 2018. Previously the Township's growth share projection based on employment was four units. Based on the 25 jobs per affordable unit ratio, this meant that Tewksbury would attract roughly 100 new jobs during this period. While this job total appeared unlikely at the time, the commenter prepared a plan to address this obligation. Now, however, the new job growth projection assumes that 720 jobs will be created, requiring 40 growth share affordable units. Since two-thirds of the Township (13,475 acres) is in the Preservation Area, the Highlands RMP will substantially constrain potential development throughout most of Tewksbury. Given the lack of zoning for such employment, the commenter questions why such an unrealistic assumption about job growth should form the basis for their affordable housing obligation. Since the anticipated development is not based upon the township's zoning capacity or infrastructure constraints, the proposed growth share approach is flawed.

RESPONSE: COAH's consultants updated the study in April to include zoning and other information provided by the New Jersey Highlands Council, and lands in the Preservation Area were constrained pursuant to DEP regulations issued under the Highlands Act. However, Tewksbury and many other communities in the Preservation Area have large numbers of exempt parcels under the Act that can be developed with single family homes. The commenter should note that Governor Corzine signed Executive Order No. 114 on September 5, 2008, under which COAH and the Highlands Council will execute a memorandum of understanding within 60 days.

COMMENT: The City of Linden has reviewed the data layers that COAH is relying upon to identify vacant developable land within the City and to increase the level of growth and fair share allocated to the City of Linden. Notwithstanding that the City has previously documented to COAH the gross errors in the vacant land data that COAH adopted with its May 2008 rule and growth allocation, COAH continues to rely on data that it knows to be seriously flawed, highly inaccurate and grossly misleading. As to the growth projections and affordable housing allocation, it is not possible to replicate COAH's growth projections and allocations. COAH shifted to growth share to foster public acceptance and understanding because past formulas were difficult to comprehend. Now, the complexity has become so great that it prevents a municipality from replicating the derivation of the growth projection and fair share at the municipal level. As to the vacant land data that COAH is relying upon to support its growth allocation to Linden, COAH has identified 345 acres of vacant developable land within the City. The City has reviewed the sites identified by COAH that contain this acreage. COAH has [page=6047] concluded that an additional 1,268 dwelling units and 10,887,843 square feet of non-residential floor space could be constructed on this acreage in Linden. An inventory of all of the parcels in Linden that COAH identified as vacant land was provided. Of the 240 parcels of land in the City that COAH has identified as the vacant and developable acreage, 211 parcels are already developed. The remaining 29 parcels of vacant land in the City total 53 acres. COAH has allocated increased growth to land in the City that is already developed and used as part of the Linden Municipal Airport, school yards, loading areas, tank farms, the right-of-way of the New Jersey Turnpike, and other developed land. Moreover, nowhere in COAH's data has COAH taken into account the job loss from the closing of the GM Plant in Linden. For COAH to continue to insist on adopting fair share allocations and growth projections based on data that is known to be seriously flawed is arbitrary, capricious, and unreasonable. Moreover, in the face of such obvious error, it is fundamentally unfair to burden Linden with an unreasonable allocation and then compel the City to seek an adjustment to that allocation. COAH's data is defective and its numbers are wrong and COAH should take that into account before it assigns numbers to Linden.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the

State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. This local data also reflects growth that has occurred since 2002, and is thus not directly comparable to COAH's growth estimates for the period 2004-2018. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred methodology in the future. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which these differences can be analyzed and necessary adjustments made.

COMMENT: Manalapan Township has reviewed the data layers that COAH is relying upon to identify vacant developable land within the Township and to increase the level of growth and fair share allocated to the Township of Manalapan. Notwithstanding that the Township has previously documented to COAH the gross errors in the vacant land data that COAH adopted with its May 2008 rule and growth allocation, COAH continues to rely on data that it knows to be seriously flawed, highly inaccurate and grossly misleading. As to the growth projections and affordable housing allocation, COAH has not provided all the information needed to evaluate and replicate COAH's growth projections and allocations. COAH shifted to growth share to foster public acceptance and understanding because past formulas were difficult to comprehend. Now, the complexity has become so great that it prevents a municipality from replicating the derivation of the growth projection and fair share at the municipal level. As to the vacant land data that COAH is relying upon to support a further increase in the COAH growth allocation to Manalapan, COAH has identified 3,654 acres of vacant developable land within the Township. The Township has reviewed the sites identified by COAH that contain this acreage. COAH has concluded that an additional 3,756 dwelling units and 1,635,899 square feet of non-residential floor space could be constructed on this acreage in Manalapan. An inventory of all of the parcels in Manalapan that COAH identified as vacant land but which are actually developed is attached. Of the 3,257 parcels of land in the Township that COAH has identified as the vacant and developable acreage, 2,703 parcels are already developed. The remaining 554 parcels of vacant land total 772 acres. COAH has allocated increased growth to land in the Township that is already developed. For COAH to continue to insist on using seriously flawed data to further increase the Township fair share planning obligation is arbitrary, capricious, and unreasonable. Moreover, in the face of such obvious error, it is fundamentally unfair to burden Manalapan with an unreasonable allocation and then compel the Township to seek an adjustment to that allocation. COAH's data is defective and its numbers are wrong. COAH should take that into account before it assigns numbers to the municipality and compels the municipality to adopt a plan to comply with COAH's projection.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. This local data also reflects growth that has occurred since 2002, and is thus not directly comparable to COAH's growth estimates for the period 2004-2018. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred methodology in the future. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which these differences can be analyzed and necessary adjustments made.

COMMENT: COAH's vacant land analysis was revised to incorporate new DEP spatial data to expand the

definition of C-1 streams, remove environmentally sensitive lands from current sewer service areas and recompute the development capacity of lands supported by septic systems pursuant to the pending DEP Water Quality Management Act Rule (WQMR), and use recently released Highlands spatial and other data to recompute the development capacity of lands in the Highlands Planning Area. However, the failure to use MOD-4 parcel data, which is widely used by counties and municipalities in their planning, remains a critical flaw in the vacant land analysis. Tewksbury's examination of the vacant land mapping reveals that there are still major discrepancies between the areas COAH says are vacant and the actual situation on the ground, as seen on the attached map. By overlaying the parcel data and aerial photography on COAH's vacant lands, we found that in many cases, what COAH determined to be "vacant" are areas that are actually developed or preserved. These areas include portions of the right-of-way of Interstate Route 78 or other roads, fully-developed parcels, slivers of land in residential rear yards, preserved farms or lands covered by conservation easements. Many of these areas also lack road frontage. Among the parcels classified as vacant are the Fairmount Cemetery and the Fairmount Rural Cemetery, lands clearly unavailable for development. More importantly, many of the parcels shown as vacant are within the Highlands Preservation Area where parcel size would preclude any possible development.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. This local data [page=6048] also reflects growth that has occurred since 2002, and is thus not directly comparable to COAH's growth estimates for the period 2004-2018. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred methodology in the future. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process. Additionally the commenter should note that on Governor Corzine signed Executive Order No. 114 on September 5, 2008 under which COAH and the Highlands Council will execute a memorandum of understanding setting forth procedures related to creating affordable housing in the Highlands.

COMMENT: The new housing projection and new employment projection for the Borough of Hillsdale are unrealistically high. These projections are based on an inaccurate vacant land assignment for the Borough. The Borough is requesting that its vacant land assignment be lowered from 143 acres to 15 acres. The resulting growth projections for the Borough of Hillsdale must also be reduced accordingly. The projections in Appendix F, Part 2 show 195 new housing units and 139 new jobs in the Borough of Hillsdale between the years 2004 and 2018. These projections are then used to determine the projected growth share of 48 affordable housing units for the Borough. However, the projection figures are not realistic for a built-out community such as Hillsdale, thereby resulting in an exaggerated projected growth share for the Borough. It appears that one significant problem behind the inaccurate growth share is an unrealistic and incorrect vacant land analysis, which was not subject to a professional peer review. The COAH website provides the consultants' data used in preparation of the round three rule amendments. One table on the website is entitled, "Vacant Land and Buildout Capacity by Municipality," dated May 2008. This table states that there are 143 acres of vacant land in the Borough. As the firm that provides both consulting planning and engineering services to Hillsdale, we can definitively state that there are not 143 acres of vacant land available in the Borough of Hillsdale.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. One key component, the Land Use/Land Cover database is based on 2002 orthophoto images of the

State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. This local data also reflects growth that has occurred since 2002, and is thus not directly comparable to COAH's growth estimates for the period 2004-2018. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred methodology in the future. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which these differences can be analyzed and necessary adjustments made.

COMMENT: The growth share obligation projects a growth of 69 new residential units between 2004 and 2019 and 281 new jobs between 2004 and 2018. The resultant growth share affordable housing obligation is projected to be 32. The new growth share projections as presented in the June 2, 2008 rules is a gross misrepresentation of the existing development and future growth within this small borough. Virtually all of residential land in Rockleigh Borough is listed on the New Jersey Register of Historic Places as well as the National Register of Historic Places. This designation is important because the Office of Smart Growth in a memorandum dated September 2005 addressed to the State Planning Commission recommended revisions to the State Plan pertaining to Historic Sites and Districts. The Office of Smart Growth recommended amending the State Plan Policy Map to reflect historic districts that are officially listed on the New Jersey or National Registers of Historic Places. Currently, the State Plan Policy Map does not depict Rockleigh Borough as a Historic District. The error in the State Plan Policy Map, which was used as the basis for allocating growth via a vacant land analysis prepared by the National Center for Neighborhood and Brownfields Redevelopment, Rutgers University, was brought to the attention of the Office of Smart Growth Executive Director (Eileen Swan) and staff during cross acceptance in the spring of 2007. The required documentation was submitted in support of the claim that Rockleigh Borough is listed on the New Jersey Register of Historic Places and the National Register of Historic Places. As you are aware, sites and districts listed on the New Jersey and/or National Register of Historic Places shall be preserved. As provided in the memorandum dated September 14, 2005 from Maura McManimon, Executive Director of Office of Smart Growth to members of the State Planning Commission, Ms. McManimon indicated; "Historical resources are the physical links to our past, provide meaning to the present and ensure continuity in the future. They are physical records of significant events and people that shaped New Jersey's history. The State Plan envisions the development of new communities and revitalization of existing cities and towns in a way that conserves these significant resources. Inclusion in the Registers provides benefits and protection for listed resources . . . " The commenter is of the opinion that the vacant land analysis and the growth share allocation were based on a faulty State Plan Policy Map as it pertains to Rockleigh Borough. According to the Rockleigh Borough 2004 Master Plan Reexamination Report prepared by Town Planning and Development Consultants, the Borough of Rockleigh has little vacant land left in the overall land supply. Nine parcels are vacant, of which six are zoned residential and are situated in the historic district, one commercial, one commercial buffer zone and one business transition. Of the six residential lots, only five are developable. In addition, approximately 45 percent of the land supply is zoned for public use and owned by Bergen County or Rockleigh Borough. Based on the above referenced study, the commenter respectfully requests a re-analysis of Rockleigh Borough's available vacant land (land that is not environmentally sensitive, listed as a historic district, preserved land, or land that is owned by the State or County).

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has

not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. This local data also reflects growth that has occurred since 2002, and is thus not directly comparable to COAH's growth estimates for the period 2004-2018. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred methodology in the future. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process.

COMMENT: The commenter strongly supports the revisions to the December 31, 2007 vacant land and development capacity analysis as described in the introduction to the May 12, 2008 final report on page 3. However, the changes to Appendix F, Part 1, Analysis of Vacant Land in New Jersey And Its Capacity to Support Future Growth, do not go far enough in excluding environmentally sensitive lands. The amendments should also exclude Federal and State threatened and endangered species habitat, identified by the NJDEP "Landscape Project," and DEP natural heritage priority sites. The amendments should exclude environmentally sensitive lands recognized or protected by municipal master plans, zoning or ordinances—for example, steam corridors or waterway buffers, steep slopes, wildlife habitat, forest, woodland or tree protection areas, [page=6049] wellhead protection zones, scenic roads or scenic resources, ridgeline and view shed protection areas.

RESPONSE: The revised analysis was prepared on a Statewide basis and reflects only those land use features that are stipulated through legislation or regulation by a Federal, New Jersey or New Jersey State government agency (Highlands, Meadowlands and Pinelands). Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which time local land use constraints can be discussed and necessary adjustments to the projections made.

COMMENT: Woodbridge Township has reviewed the data layers that COAH is relying upon to identify vacant developable land within the Township and to increase the level of growth and fair share allocated to the Township. Notwithstanding that the Township has previously documented to COAH the gross errors in vacant land data that COAH adopted with its May 2008 rule and growth allocation, COAH continues to rely on data that it knows to be seriously flawed, highly inaccurate and grossly misleading. As to the vacant land data the COAH proposed to adopt to support a further increase in the COAH growth allocation to Woodbridge, COAH has identified 1,390 acres of vacant developable land within the Township. The Township has reviewed the sites identified by COAH that contain this acreage. COAH has concluded that an additional 4,736 dwelling units and 12,110,643 square feet of non-residential floor space could be constructed in the Township. The vacant land identified by COAH consists of developed lots and lands that include yard areas, highway rights-of-way, parking areas, gas transmission line rights-of-way, the Rahway State Prison, and other developed parcels. Woodbridge is a fully developed community with an extremely limited supply of vacant developable land. Those limitations have been public record for a decade and are documented in the vacant land adjustment that was approved in 1999. The amount of vacant developable land in Woodbridge that was found to be suitable for residential development in 1999 was a total of 34.17 acres. The potential for new residential construction on the 34.17 vacant developable acreage was determined to be 276 dwelling units. For COAH to continue to ignore reality, rely on data that COAH knows to be seriously flawed, and then proceed to adopt rules determining that there are 1,390 acres of vacant land in Woodbridge and an ability to grow an additional 4,736 dwellings is arbitrary, capricious and unreasonable.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. This local data also reflects growth that has occurred since 2002, and is thus not directly comparable to COAH's growth estimates for the

period 2004-2018. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred methodology in the future. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which these differences can be analyzed and adjustments made as necessary.

COMMENT: The vacant land analysis includes a variety of lands that are clearly unavailable for development, despite COAH counting on these lands to help fit the forecast growth. In Bedminister, this includes a variety of developed lands and preserved lands, including preserved farmland, wooded strips in the rear yards of developed residential lots, conservation easements, open space in condo developments, lands at Somerset Airport, the interchange of I-78 and I-287 and the median strips in these highways. Clearly none of these lands is available or suitable for development, yet these lands are being counted on to host future development. According to the detailed lot-by-lot build-out analysis in our Master Plan, Bedminster's non-residential zones have a remaining development capacity of approximately 575,000 square feet. This largely results from a prior authorization for future construction by AT&T of 300,000 square feet and a 170,000-square foot approved office development in Pluckemin. Apart from these developments, the incremental infill that can occur on the generally small lots in Bedminster's non-residential zones will account for roughly another 100,000 square feet. Thus, COAH's estimate of non-residential growth has been overstated by more than six fold. As a result, COAH forecasts 3,425,000 square feet more development than actually appears possible in Bedminster's non-residential zones. Thus, we believe that the estimate of non-residential growth should be modified to reflect the limited remaining development potential in Bedminster.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. This local data also reflects growth that has occurred since 2002, and is thus not directly comparable to COAH's growth estimates for the period 2004-2018. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred methodology in the future. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which these differences can be analyzed and necessary adjustments made.

COMMENT: This proposes adjustments to the vacant land analysis to incorporate new DEP spatial data. As before, however, the data remains flawed and suspect, and local governments have been given insufficient time to evaluate the agency's projections. Further, the agency does not take into account the best uses for developable land, particularly in terms of height requirements. It has always been a principle of sound planning and "smart growth" to take into account the appropriate height differentials. The agency is attempting to compel increased height requirements, regardless of the suitability of the land based on water and sewer capacity, or the potential economic impact on other municipal services, including fire coverage, infrastructure and school construction.

RESPONSE: The Appellate Division in its 2007 decision required COAH to demonstrate that there was sufficient vacant land to justify use of a growth share approach to establishing affordable housing need. In preparing the vacant land analysis, COAH's consultant used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection, Pinelands Commission and New Jersey Highlands Council. All publicly and privately-owned open space, parks, preserved farmlands, etc. contained in these various databases were removed and not included as vacant land. COAH believes that its methodology is in full compliance with the Fair Housing Act.

COMMENT: Despite numerous objections raised during the public review period associated with COAH's third round rules published in the January 22, 2008 New Jersey Register and the first version of the Vacant Land Analysis, and the presentation and submission of detailed data and information illustrating errors to COAH, no fundamental changes were made to rectify inaccuracies resulting from the use of the NJDEP's 2002 GIS Land Use Land Cover Dataset as the basis for defining vacant land. The bulk of the error is associated with the inclusion of side, rear and front set-back areas associated with many residential and non-residential [page=6050] parcels that cannot be subdivided without a variance as part of vacant developable land. Although the May 2, 2008 Analysis of Vacant Land (Page 6) acknowledges this error and recognizes that improvements to the results that would be possible if parcel data was used, the report states that because uniform, State agency verified parcel data is not available Statewide, parcel data could not be used for the analysis. Commenters strongly disagree with the decision to deny the use of more detailed GIS datasets based on county tax parcel information in counties that currently have this data available in order to yield more accurate results. COAH utilized different methods, base data and build-out factors for identifying vacant land and build-out capacity in the Meadowlands, Pinelands, and Highlands as compared to what was used in the "Rest of State," yielding inherently different results for each area that are difficult to compare. If COAH was truly concerned about consistency Statewide and applied a uniform methodology to all areas of the State, a very different result would have been generated. For this reason, the County Planning Board is very concerned that the distribution of vacant land and associated development capacity statewide presented in the May 2nd Analysis is fundamentally flawed. For example, the May 2nd analysis applied GIS data representing actual municipal zoning densities within Sewer Service Areas in the Highlands Planning Area instead of the dwelling units associated with the four land use categories unique to each COAH region that were applied in the "Rest of State." This resulted in an increase in projected growth share for Somerset County's five Highlands municipalities (Bedminster, Bernards, Bernardsville, Far Hills and Peapack and Gladstone) from 628 affordable units based on the analysis associated with the June 2, 2008 adopted third round rules to 797 units (an increase of 169 units) based on the May 2nd Analysis associated with the proposed amendments, even though total vacant land in the Highlands pursuant to the May 2nd Analysis is 104,479 acres, significantly lower than the 110,237 acres calculated previously. Countywide, projected growth share increased from 4,830 to 5,378, an unexplainable increase of 548 units - despite the removal of additional environmentally constrained lands from vacant lands available for development, the removal of lands from sewer service areas, and the application of DEP's new WQMP HUC 11 septic densities based on a lower nitrate dilution standard of two ppm in areas served by on-site septic systems in both the Highlands Planning Area and Rest of State according to May 2nd Analysis. It is important to note that the Highlands Council considers the use of the new WQMP HUC 11 septic densities to be inconsistent with the Highlands Regional Master Plan. It is our understanding that the DEP is developing a "hybrid" approach that blends the new WQMP septic standards with the Highlands septic standards for use in the Planning Area. This change would theoretically have the affect of lowering the build-out results and growth share requirements for the County's Highlands municipalities, and represents another reason why the proposed growth share requirements are inflated. DEP clipped adopted sewer service areas to remove Habitat ranked 3, 4 and 5, wetlands, C-1 buffers and floodplains to facilitate the County Wastewater Management Planning Process in accordance with the new WQMP Rules. This data layer was used in the May 2nd analysis, despite the fact that the layer is only draft. It is currently being vetted at the municipal level by counties involved in the new Wastewater Planning Process, and is subject to corrections identified by counties and municipalities as part of the WMP process, further diminishing the accuracy of COAH's Vacant Land Analysis.

RESPONSE: In its May reports, COAH and its consultants sought to use the most accurate and updated information available on a Statewide or regional basis, and to estimate the impacts of the then pending DEP WQMP rule changes and Highlands Regional Master Plan. Changes in vacant land and buildout capacity assumptions in the Highlands and other areas of the State that were incorporated in this updated analysis sometimes required that employment and household growth be reallocated among municipalities in order to remain equal to the county-level estimates provide by the New Jersey Department of Labor and Workforce Development. The recently adopted DEP WQMP rules will require that each of the 21 counties in the State develop a comprehensive long-term wastewater and water management plan to replace the 190 plans now in use, the overwhelming majority of which are out of date. These plans will be required to address any inconsistencies between buildout demand versus treatment capacity and water availability. In addition, development capacity and growth allocations within the Highlands will need to be refined to

respond to adoption of its Regional Master Plan and decisions by individual municipalities in the Planning Area regarding their conformance to the RMP. Ultimately, these various plans, studies and decisions will determine the final municipal level growth allocations and affordable housing requirements prepared by COAH. The commenter should note that the Governor signed Executive Order No. 114 on September 5, 2008, addressing the relationship between COAH and the Highlands and has directed COAH and the Highlands to enter into an memorandum of understanding within 60 days.

COMMENT: Some of the vacant land identified in the township has already received development approvals, either built already or under construction. This is mismatch is inevitable when there is a time lag between the data used for analysis and the implementation of the resulting regulations. In looking at the "COAH vacant land" layer along with 2005 aerial photos and parcel data, it is clear that while some of the identified land is in fact "vacant," some of it is also within the right-of-way of local roads, county roads and State highways, and within the circular areas created by highway ramps. Added up over the entire State, this will add up to a significant over statement of the available vacant land acreage. COAH's analysis assumes that 10 percent of available vacant lands will be used for nonresidential and noncommercial purposes, that is, utilities, transportation networks, etc. This does not seem to account for existing utility and transportation network lands that have been counted as vacant and developable. A reasonable alternative would be to take the NJDOT road layer (lines) and buffer them to create realistic right-of-way areas. Lands in the backyards of homes in existing single family developments were counted as vacant in some instances. At least one of the Township's open space tracts was not accounted for in COAH's analysis. COAH utilized a layer called "openspace07" that was provided by the Office of Smart Growth. This layer includes many, but not all, of the Township's open spaces. Other constraints such as streams, stream buffers, wetlands, and flood plains were subtracted from the land, so only portions of these properties were ultimately retained as "available vacant land." Given these concerns, it is questionable whether COAH's analysis of undeveloped and unconstrained land can be relied upon as an approximation of reality.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. This local data also reflects growth that has occurred since 2002, and is thus not directly comparable to COAH's growth estimates for the period 2004-2018. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred methodology in the future. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which these differences can be analyzed and necessary adjustments made.

COMMENT: How do these proposed amendments coordinate with the new NJDEP water quality management rules? Which sewer service area (SSA) boundaries were used in determining land capacity? What is the anticipated change in land capacity once Wastewater Management Plans are approved by NJDEP under the new rules? How is a municipality supposed to reasonably calculate land capacity if sewer service areas are not established through the WMP process until after COAH's December 31, 2008 deadline for plan submission?

RESPONSE: The proposed COAH rule amendments are based on the May 2, 2008 consultant report, which includes an estimate of the [page=6051] potential impact of the newly adopted Water Quality Management Act changes on development capacity in both sewer service and septic areas. With assistance from the DEP, the consultant identified and removed large contiguous land areas from existing sewer service areas that contained any one of four environmental features, as required by N.J.A.C. 7:15-5.24(b), and reclassified these as lands that would have to be developed using septic systems. This process reclassified a total of 95,706 acres of vacant land. In addition, the consultant used the new

nitrate dilution factor of 2.0 mg/L, which is the ambient nitrate quality in ground water, in computing development capacity for all areas in the state that would be served by septic systems except the Highlands Preservation Area. The recently adopted DEP WQMP rules will require that each of the 21 counties in the State develop a comprehensive long-term wastewater and water management plan to replace the 190 plans now in use, the overwhelming majority of which are out of date. These plans will be required to address any inconsistencies between buildout demand versus treatment capacity and water availability. Ultimately, these plans will inform the final municipal level growth allocations and affordable housing requirements prepared by COAH.

COMMENT: COAH's vacant land classification contains factual errors which must be acknowledged and corrected. The COAH map indicates widespread areas of the Borough of Woodcliff Lake as vacant which are not. The proposed amendments indicated total vacant land in Woodcliff Lake to be 368 acres. We believe the true vacant acreage to be approximately 25 acres, based on upon the documentation and maps included in our comments. In light of the gross inaccuracies in the vacant land map for the Borough of Woodcliff Lake, the commenter recommends revisions to the projections based on local input. COAH's vacant land analysis mapping is an integral element in many assumptions driving the third round rules. It is difficult for communities to abide by rules which are inherently flawed by virtue of the glaring overestimate of vacant land in an essentially fully developed community.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. This local data also reflects growth that has occurred since 2002, and is thus not directly comparable to COAH's growth estimates for the period 2004-2018. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred methodology in the future. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which these differences can be analyzed and necessary adjustments made.

COMMENT: COAH's revised vacant land analysis entitled "Analysis of Vacant Land in New Jersey and its Capacity to Support Future Growth," prepared by Henry J. Mayer, Ph.D., Rutgers University, dated December 31, 2007 and revised through May 2, 2008, continues to overstate the amount of vacant land available for future development in South Brunswick Township. Although there are a number of concerns, the two main flaws in COAH's analysis are the publicly-owned lands accounting for over 3.1 square miles and the over 1,000 acres of previously developed land that were not excluded from the vacant land analysis in COAH's consultant's study. The publicly owned lands include parks and open space owned by the Township (1,145 acres), the County (465 acres) and the State (386 acres). The Township reserves the right to provide additional information to COAH's consultant. COAH should revise the job and housing growth assigned to South Brunswick Township.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. This local data also

reflects growth that has occurred since 2002, and is thus not directly comparable to COAH's growth estimates for the period 2004-2018. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred and accurate methodology in the future. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which these differences can be analyzed and necessary adjustments made.

COMMENT: Section 4.7, Page 23, of the Appendix F "Analysis of Vacant Land in New Jersey And Its Capacity to Support Future Growth" and Task 1--Allocating Growth to Municipalities, in Section 1.3.2, Page 6 Comment: The Department of Labor and Workforce Development projections, the vacant land analysis prepared by the National Center for Neighborhood and Brownfields Redevelopment (NCNBR) at Rutgers University, and COAH's updates utilizing new NJDEP special data, which form the basis of COAH's projections, do not adequately take into consideration infrastructure capacity. Section 4.7 of the vacant analysis report (Page 23), states that the NCNRB "did not use water and wastewater treatment capacity data to evaluate whether the vacant land capacity estimates in this report generate water demand that exceeds the capacity of the local provider or ground water resource, or effluent flows that exceed the treatment capacity of any sewer service area." Task 1--Allocating Growth to Municipalities, in Section 1.3.2, Page 6 states, "the historical data at the municipal level are crucial for the allocation model because they exhibit the historical growth rates of each municipality, particularly the reference period between 1993-2002." The section further states that the municipal population and employment estimates in 2002 are critical in the allocation model because the initial allocation is based upon the historic growth from 1993-2002 and the extent to which the municipality is built-out. These projections are based upon the historical growth. There are other factors such as environmental constraints, zoning changes etc. that could potentially restrict development and a municipality might not experience uniform growth. Updates to NCNBR's vacant lands analysis were prepared and discussed within the proposed amendments to the third round regulations. From the information provided it appears that the vacant lands analysis still does not take into consideration the limitations of local water and wastewater systems. Therefore, the Department of Labor and Workforce Development projections, the vacant land analysis prepared by the NCNBR, and COAH's updates utilizing new NJDEP special data, which form the basis of COAH's projections, do not adequately take into consideration infrastructure capacity. Specifically, sewer service availability and capacity do not appear to have been adequately considered and, therefore, render the growth projections inaccurate for municipalities that have significant sewer service limitations. COAH should adjust its projections to account for sewer service limitations or provide a means for municipalities to do so.

RESPONSE: The recently adopted DEP WQMP rules will require that each of the 21 counties in the State develop a comprehensive long-term wastewater and water management plan to replace the 190 plans now in use, the overwhelming majority of which are out of date. These plans will be required to address any inconsistencies between buildout demand versus treatment capacity and water availability. Ultimately, these plans will inform the final municipal level growth allocations and affordable housing requirements prepared by COAH.

[page=6052] COMMENT: Appendix F, Task 1--Allocating Growth to Municipalities, in Section 1.3.2, Page 6 Comment: The GIS spatial datasets and method used by the consultant in conducting the vacant land analysis are much more appropriate for regional and statewide analyses than the Department of Labor and Workforce Development projections used by COAH. Task 1- Allocating Growth to Municipalities, in Section 1.3.2, Page 6 states, "the historical data at the municipal level are crucial for the allocation model because they exhibit the historical growth rates of each municipality, particularly the reference period between 1993-2002." The section further states that the municipal population and employment estimates in 2002 are critical in the allocation model because the initial allocation is based upon the historical growth from 1993-2002 and the extent to which the municipality is built-out. These projections are based upon the historical growth. There are other factors such as environmental constraints, zoning changes etc. that could potentially restrict development and a municipality might not experience uniform growth. The Department of Labor and Workforce Development projections do not take into consideration the State Development and Redevelopment Plan, or regulated environmental constraints or other limiting factors affecting future growth at the local level. The GIS spatial datasets and method used by the consultant in conducting the vacant land analysis are much more

appropriate for regional and Statewide analyses. Inaccuracies in the datasets and methods become much more apparent when applied at the local level.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. This local data also reflects growth that has occurred since 2002, and is thus not directly comparable to COAH's growth estimates for the period 2004-2018. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred methodology in the future. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which these differences can be analyzed and necessary adjustments made.

COMMENT: In the Vacant Land Analysis, there is a chart that modifies the number of residential units and million square feet of space to be accommodated in the Build Out Analysis for all six Regions. Please explain in full and complete detail how and why each of the numbers is being modified. It appears, for instance, in Region 2, that while residential units are declining substantially, nonresidential space is being increased substantially. This suggests there was an error in the original report allocating land to either residential or nonresidential areas. Conversely, Regions 1, 3, 4, 5 and 6 all have reductions in both residential units and million square feet of space. Please describe briefly the elements which caused those reductions, and the cause of the increase in million square feet of space in Region 2.

RESPONSE: There were three primary changes to the consultant's December analysis incorporated in its final May 2nd report. The first were a series of small adjustments to vacant land in different areas of the State due to revisions in calculating constraints under the DEP's Flood Hazard Area rules (see section 3.1.1 of the May 2nd report). The second was the inclusion of the estimated impacts of the recently adopted DEP Water Quality Management Planning Rule changes that removed lands from existing sewer service areas and imposed more conservative septic density restrictions on development outside of sewer service areas. The third was the use of Highlands Planning Area land use and related density zoning information. This change increased the amount of non-residential development that was reported in Region 2.

COMMENT: In the Vacant Land Analysis, there is a reduction of acres of vacant "buildable" land in the preservation area of the Highlands down from 14,707 to 6,630 acres. Please explain how that reduction came about. What was the basis? Additionally, the insertion of the word "buildable" raises question as to whether or not the Vacant Land Analysis is a computation of vacant land or a computation of vacant buildable or developable land. The study seems to apply densities to all the vacant land, and now interjects a differentiation for buildable land. Please explain.

RESPONSE: The 6,630 was a typographical error. Both the adopted and proposed studies used the same estimate of 6,630 acres of "buildable" land in the Preservation Area. The process of developing that estimate was correctly described in the report adopted on June 2, 2008, which is that the consultant started with an unconstrained spatial file of 14,707 acres and then subtracted several constraints specific to the Highland Preservation Area. It was incorrectly worded in the proposed report, as the final result of 6,630 was inadvertently inserted in place of the 14,707. This has been corrected upon adoption.

COMMENT: Did you use any of the GIS data supplied by counties to OSG from Cross-Acceptance to rectify GIS data conflicts before the vacant land analysis was initiated? Did you directly involve counties in your data gathering procedures to acquire the most up to date information for your analysis? What method was used to verify state data with

actual on the ground conditions?

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and NJ Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. This local data also reflects growth that has occurred since 2002, and is thus not directly comparable to COAH's growth estimates for the period 2004-2018. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred methodology in the future. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which these differences can be analyzed and necessary adjustments made.

COMMENT: Eatontown Borough has reviewed the data layers that COAH is relying upon to identify vacant developable land within the Borough and to increase the level of growth and fair share allocated to the Borough of Eatontown. Notwithstanding that the Borough has previously documented to COAH the gross errors in the vacant land data that COAH adopted with its May 2008 rule and growth allocation, COAH continues to rely on data that it knows to be seriously flawed, highly inaccurate and grossly misleading. As to the growth projections and affordable housing allocation, COAH has not provided all the information needed to evaluate and replicate COAH's growth projections and allocations. COAH shifted to growth share to foster public acceptance and understanding because past formulas were difficult to comprehend. Now, the complexity has become so great that it prevents a municipality from replicating the derivation of the growth projection and fair share at the municipal level. As to the vacant land data that COAH is relying upon to support a further increase in the COAH growth allocation to Eatontown, COAH has identified 436 acres of vacant developable land within the Borough. The Borough has reviewed the sites identified by COAH that contain this acreage. COAH has concluded that an additional 1,390 dwelling units and 3,359,121 square feet of non-residential floor space could be constructed on this acreage in Eatontown. An inventory of all of the [page=6053] parcels in Eatontown that COAH identified as vacant land, but which are actually developed, is attached. Of the 697 parcels of land in the Borough that COAH has identified as the vacant and developable acreage, 649 parcels are already developed. The remaining 48 parcels of vacant land and farmland in the Borough contain a mere 37.28 acres. COAH has allocated increased growth to land in the Borough that is already developed for residential and commercial use; or used as cemeteries; or developed as schools or public parkland. Over 92 acres of the 436 acres of vacant developable land identified by COAH are highways, streets and roads. Moreover, nowhere in COAH's data has COAH taken into account the massive job loss that will be taking place at Fort Monmouth in Eatontown (see attached Economic Impact Report prepared by Jeffrey Donohoe Associates). In fact, COAH now proposes to amend its rule to increase the job growth allocation to the Borough. For COAH to continue to ignore economic reality and insist on using seriously flawed data to further increase the Borough fair share planning obligation is arbitrary, capricious, and unreasonable. Moreover, in the face of such obvious error, it is fundamentally unfair to burden Eatontown with an unreasonable allocation and then compel the Borough to seek an adjustment to that allocation through an onerous process that applies densities in excess of what are permitted under the local zone plan. If COAH's data is defective and its numbers are wrong, then COAH should take that into account before it assigns numbers to the municipality and compels the municipality to adopt a plan to comply with COAH's projection.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the

State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. This local data also reflects growth that has occurred since 2002, and is thus not directly comparable to COAH's growth estimates for the period 2004-2018. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred methodology in the future. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which these differences can be analyzed and necessary adjustments made.

COMMENT: In the Vacant Land Analysis, new totals of acreage in each of the six regions is presented, with four regions being reduced, and two increased. The report does not specifically set forth how those numbers were calculated, and the specific reasons for the modifications. Please explain in full and complete detail, for each region, how and why the acreage numbers are being modified.

RESPONSE: The increases in vacant land shown for COAH Regions 4 and 5 were caused by a consultant error in assigning several municipalities to the appropriate COAH Region. The vacant land amounts have been corrected as follows: Region 4--168,594; Region 5--189,164 acres; and Region 6--298,124 acres. All are reductions in total area from the estimates adopted on June 2, 2008. This error had no impact on the vacant land or buildout capacity of any individual municipality, or the totals for the State. The reductions in vacant land are fully described in section 3.1.1 Flood hazard Area Constraints of the report. They include: updating of FEMA Flood Insurance Rate Maps in 8 counties, increasing the buffers along streams located in areas of acid producing soils to a minimum of 150 feet, and expanding the C-1 stream classification to include the headwaters of designated C-1 streams.

COMMENT: COAH has negligently called streams and other buildings "vacant land." Also, 500-year storms are coming via global warming and COAH has not taken steps to be sure that we don't have our citizens living in flood areas.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. This local data also reflects growth that has occurred since 2002, and is thus not directly comparable to COAH's growth estimates for the period 2004-2018. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred and accurate methodology in the future. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which these differences can be analyzed and necessary adjustments made. In order to ensure that affordable units would not be constructed in areas threatened by flooding, the Council used the latest NJDEP Flood Hazard Rules in determining the vacant land available throughout the State.

COMMENT: COAH's Appendix F vacant land analysis entitled "Analysis of Vacant Land in New Jersey and its Capacity to Support Future Growth," prepared by Henry J. Mayer, Ph.D., Rutgers University, dated December 31, 2007 and revised through May 2, 2008, continues to overstate the amount of vacant land available for future development in Readington Township. Although the Township has a number of concerns, the principal issue is that large amounts of public and private open space, preserved farmland, public school sites and undevelopable portions of previously

developed lots were not excluded from the vacant land analysis in COAH's consultant's study. Upon initial review, there are over 1,700 acres of preserved farmland and open space within Readington that were included as vacant developable lands. This represents 15 percent of the total identified within the consultant report. As Readington is able to completely analyze, compare and summarize findings with respect to developable and non-developable lands, the Township reserves the right to provide additional information to COAH's consultant.

RESPONSE: In preparing the vacant land analysis, COAH's consultants used the most currently available Statewide and/or regional geospatial data that had been collected, developed or prepared by the Office of Smart Growth, Department of Agriculture, Department of Environmental Protection (NJDEP), Pinelands Commission and New Jersey Highlands Council. One key component, the Land Use/Land Cover database, is based on 2002 orthophoto images of the State having a resolution of one acre. The analysis of that data required several years, and NJDEP did not release the GIS database until early 2007. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge of land uses and constraints as of 2008. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. This local data also reflects growth that has occurred since 2002, and is thus not directly comparable to COAH's growth estimates for the period 2004-2018. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a Statewide basis in several years, and it hopes to use this more preferred and accurate methodology in the future. Municipalities have the ability to seek a growth projection adjustment through the COAH certification process, at which these differences can be analyzed and necessary adjustments made.

[page=6054] COMMENT: Please explain how vacant land actually increased in COAH Regions 4 and 5, when the narrative of the report appears to state that land was removed from, but not added to, the vacant land inventory.

RESPONSE: The increases in vacant land shown for COAH Regions 4, 5 and 6 were caused by a consultant error in assigning several municipalities to the appropriate COAH Region. The correct vacant land amounts should be: Region 4--168,594; Region 5--189,164 acres; and Region 6--298,124 acres. All are reductions in total area from the estimates adopted on June 2, 2008. This error had no impact on the vacant land or buildout capacity of any individual municipality, or the totals for the State.

COMMENT: The use of local zoning data for the Highlands Planning Area produces, as the authors recognize, assumptions that will never be realized because DEP and the Highlands do not permit construction of the development described. However, the authors use this zoning data towards the vacant land totals even after admitting that it is not feasible. The authors should have instead used a more realistic analysis of vacant land, which would have resulted in allocating more affordable housing need to areas in COAH Regions 1 and 2 that actually could support growth.

RESPONSE: COAH's consultants used the most accurate information publicly available from the Highlands Council. The commenter should note that Governor signed Executive Order No. 114 on September 5, 2008, addressing the relationship between COAH and the Highlands and has directed COAH and the Highlands to enter into an memorandum of understanding within 60 days.

COMMENT: In the vacant land analysis, with reference to use of Highlands Spatial Land Use Data, it is indicated that the Regional Master Plan-Final Draft, and the supporting technical information, was used in the revisions to the vacant land analysis. Is the vacant land analysis now consistent with the build out technical information released by the Highlands Council in connection with the final draft the Regional Master Plan? If not, explain the differences, and the reason for the differences.

RESPONSE: The vacant land and development estimates for the Highlands Planning Area prepared by COAH's consultants differ from those recently published in the Highlands Regional Master Plan Technical Report in two ways. The first is that the Highlands used 2007 MOD IV property tax information to identify parcels that were vacant in 2007. COAH's consultants used DEP 2002 LU/LC spatial data to estimate vacant land. The second is that the Highlands used

a more conservative methodology for estimating the development capacity of lands located outside sewer service areas. COAH's consultants included open space, as permitted by DEP under its recently adopted Water Quality Management Planning Rule changes and used by the consultant in its "rest of state" estimates, in calculating the gross land area available for septic drainage. The Highlands did not. The commenter should note that the Governor signed Executive Order No. 114 on September 5, 2008, addressing the relationship between COAH and the Highlands and has directed COAH and the Highlands to enter into an Memorandum Of Understanding within 60 days.

COMMENT: In the vacant land analysis, please explain why the report now deletes the reference to 19 municipalities having no remaining vacant land. If they had no remaining vacant land before, please explain how they have remaining vacant land as of May 2, 2008.

RESPONSE: Removing the reference of there being 19 municipalities with no vacant land from the consultant's May 2nd Report does not equate to a change in their status. After revisions to the impacts of the Flood Hazard Area Constraints (see Section 3.1.1 of Report), a total of 25 municipalities were found to have no vacant land.

Summary of Agency-Initiated Changes

Citations referencing N.J.A.C. 5:97-2.2(d), in regard to the utilization of municipal growth projections, were revised in N.J.A.C. 5:97-2.4(a) and (b) to appropriately reference N.J.A.C. 5:97-2.3(d), the subsection that specifically describes municipal growth projections.

A citation referencing N.J.A.C. 5:97-6.4(b)2iii, in regard to the density and set-aside for inclusionary rental developments, was revised in N.J.A.C. 5:97-2.4(a)1ii to appropriately reference N.J.A.C. 5:97-6.4(b)3iii, the subparagraph that specifically includes the density and set-aside for inclusionary rental developments.

A citation referencing N.J.A.C. 5:97-2.4(a)1, in regard to exclusions from the actual growth share obligation for second round inclusionary sites, was revised in N.J.A.C. 5:97-2.5(a)1i to more specifically reference N.J.A.C. 5:97-2.4(a)1ii, clarifying that only the market rate units in second round inclusionary sites may be subtracted from the total market rate certificates of occupancy. The affordable units referenced in N.J.A.C. 5:97-2.4(a)1i would not need to be subtracted because they would not be included in the total market rate certificates of occupancy in the section.

The word "residential" was inserted in N.J.A.C. 5:97-8.3(e)3 and (f) to clarify that these regulations only apply to residential development fees, as non-residential development fees are now regulated by the Statewide Non-residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 8.7. COAH will propose regulations consistent with N.J.S.A. 40:55D-8.1 through 8.7 in the future.

In N.J.A.C. 5:97 Appendix A, a numerical total for the reduced units to deliver current round under Housing Unit Growth (2004-2018) that was proposed for change in a table but was not corrected in the paragraph preceding the table has been corrected.

Federal Standards Statement

No Federal standards analysis is required because these amendments and new rules are not being adopted in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

5:97-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

. . .

"Adaptable" means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

. .

"Development application" means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, a site plan, planned development, conditional use, zoning variance or direction of the issuance of a permit pursuant N.J.S.A. 40:55D-34 or 36.

. .

"Disabled person" means a person with a physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect, aging or illness including epilepsy and any other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device (N.J.S.A. 52:27D-304k).

"DOT" means the New Jersey Department of Transportation.

"Durational adjustment" means a deferral of the prior round or projected growth share obligation based on lack of infrastructure pursuant to N.J.A.C. 5:97-5.4.

. . .

"Implementation schedule" means a schedule, pursuant to N.J.A.C. 5:97-3.2(a)4, that sets forth a detailed timetable for units to be provided within the period of substantive certification that demonstrates "realistic opportunity" as defined under this section and a timetable for the submittal of all information and documentation required by N.J.A.C. 5:97-6.

"1,000-unit limitation" means a cap of the prior round or projected growth share obligation, pursuant to the Act, where no municipality shall be required to address its fair share beyond 1,000 units within 10 years from the grant of substantive certification.

. . .

"Permanent supportive housing" means a permanent lease based housing unit that provides access to supportive services for individuals with special needs and households with individuals with special needs who can benefit from housing with services.

. . .

"Potential growth share opportunities" means the difference between the projected growth share obligation resulting from the household and employment projections provided by the Council in chapter Appendix F and the projected growth share obligation resulting from a household and employment growth projection adjustment as determined pursuant to N.J.A.C. 5:97-5.6.

. . .

"Residential health care facility" means a facility licensed and/or regulated by the New Jersey Department of Health and Senior Services or the Department of Community Affairs, that provides food, shelter, supervised health care and related services to four or more persons 18 years of age or older who are unrelated to the owner or administrator.

. . .

"Sewer capacity" means the ability to treat and dispose of all sewage generated from a site by means of public or private, off-site or on-site facilities that are consistent with the areawide water quality management plan (including the wastewater management plan), or with an amendment to the areawide water quality management plan submitted to and under review by DEP, as applicable.

"Site control" means the demonstration that a developer or municipality maintains outright ownership of a site, a contract to purchase or an option on the property.

. . .

"Supportive and special needs housing" means a structure or structures in which individuals or households reside, as delineated in N.J.A.C. 5:97-6.10, previously referred to as alternative living arrangements.

"Supportive shared living housing" means permanent lease based supportive housing that provides access to supportive services to individuals with special needs who maintain separate leases for bedrooms and share common living space.

"Townhouse" shall mean a single family attached dwelling unit as defined in the Barrier Free Subcode of the Uniform Construction Code, N.J.A.C. 5:23-7.

"Transitional housing" means housing with on-site or off-site supportive services that facilitate the movement of individuals and families, who are homeless or lack stable housing to permanent housing, within a fixed amount of time, generally up to 24 months.

"Transit oriented development (TOD)" means individual development(s) located within a one-quarter-mile radius to one-half-mile radius (an average 1,000 to 2,000-foot or five to 10 minutes walking distance) of a transit *[stop]* *station* (bus, train, light rail or ferry) within a larger, pedestrian-friendly, transit--supportive neighborhood core/center. A TOD is usually characterized by a mix of uses, compact, higher densities than typical development and designed using transit-supportive site design guidelines.

. . .

"Urban Center" means a city of Statewide importance, designated as an Urban Center by the State Planning Commission. An Urban Center is a large settlement that has a high intensity of population and mixed land uses, including industrial, commercial, residential and cultural uses, the historical foci for growth in the major urban areas of New Jersey.

. . .

"Water capacity" means the ability to provide adequate potable water to a site from a public or private, off-site or on-site source of supply, in a manner consistent with all applicable regulations.

. . .

"Workforce housing census tracts" means census tracts where 15 percent or more of the population falls below the Federal poverty level.

5:97-2.2 Determining the fair share obligation

(a)-(d) (No change.)

- (e) The actual growth share obligation shall be based on permanent certificates of occupancy issued within the municipality for market-rate residential units and newly constructed or expanded non-residential developments in accordance with chapter Appendix D. Affordable housing shall be provided in direct proportion to the growth share obligation generated by the actual growth. However, if the actual growth share obligation is less than the projected growth share obligation, the municipality shall continue to provide a realistic opportunity for affordable housing to plan for the projected growth share through inclusionary zoning or any of the mechanisms permitted by N.J.A.C. 5:97-6. The municipality may submit an implementation schedule as detailed in N.J.A.C. 5:94-3.2(a) that sets forth a detailed timetable for affordable units to be provided within the period of substantive certification that demonstrates realistic opportunity and a timetable for the submittal of all information and documentation required for each mechanism. The implementation schedule shall consider the economic viability of the proposed mechanism, including the availability of public subsidies, development fees and other sources of financing. Although the overall Statewide and regional need calculations are figured from the last year of the prior round (1999) to the last year of the new round (2018), the municipality's portion of the statewide need is compressed into a delivery period that runs from January 1, 2004 to December 31, 2018.
- 5:97-2.3 Content of a Housing Element
- (a) The Housing Element submitted to the Council shall include:
- 1.-4. (No change.)
- 5. The municipality's rehabilitation share (from chapter Appendix B); and
- 6. The projected growth share in accordance with the procedures in N.J.A.C. 5:97-2.4.
- (b)-(c) (No change.)
- (d) As an alternate to the household and employment projections required by (a)2 and 3 above, a municipality may rely upon its own household and employment growth projections, provided the total growth share resulting from the municipal household and employment growth projections exceeds the total growth share resulting from the household and employment growth projections provided in Appendix F.
- 1. The alternate projection of the municipality's probable future construction of housing for 15 years covering the period January 1, 2004 through December 31, 2018 shall consider the following minimum information for residential development:
- i.-ii. (No change.)
- iii. Historical trends of at least the past 10 years, which includes certificates of occupancy issued.
- 2. The alternate projection of the probable future jobs based on the use groups outlined in chapter Appendix D for 15 years covering the period January 1, 2004 through December 31, 2018 for the municipality shall consider the following

minimum information for non-residential development:

- i. (No change.)
- ii. Square footage of pending, approved and anticipated applications for development;
- iii. Historical trends, of, at least, the past 10 years, which shall include the square footage authorized by certificates of occupancy issued; and
- iv. Demolition permits issued and projected.
- 5:97-2.4 Projecting the growth share obligation
- (a) A municipality shall determine the residential component of its projected growth share obligation for the period January 1, 2004 to December 31, 2018 based on the household projections provided in chapter Appendix F, unless municipal projections are utilized pursuant to N.J.A.C. 5:97-*[2.2(d)]**2.3(d)*. If municipal projections are utilized, the growth share obligation shall be determined pursuant to the procedures in N.J.A.C. 5:97-2.5(a) through (c).
- 1. In determining its projected residential growth share obligation, a municipality may subtract the following from its household projection:
- i. (No change.)
- ii. Market-rate units in an inclusionary or mixed-use development where these affordable housing units received credit in a first or second round certified plan or a court judgment of compliance or are eligible for credit pursuant to N.J.A.C. 5:97-4 toward a municipality's prior round obligation, which have been or are projected to be constructed after January 1, 2004, provided these sites are zoned to produce affordable housing units. The Council shall assume, for crediting purposes, that market-rate units are constructed at a rate of four times the number of affordable units (this is a 20 percent set-aside) constructed on that particular site or constructed off-site but within the municipality, unless the municipality demonstrates to the Council that a lower set-aside percentage was used to produce the affordable units using the gross [page=6056] density and set-aside standards or the set-aside standards for constructing affordable rental units pursuant to N.J.A.C. 5:97-6.4(b)*[2iii]**3iii*. A municipality shall not receive an exclusion of market-rate units from residential growth at a rate above 5.67 times the number of affordable units (this is a 15 percent set-aside constructed on that particular site or constructed off-site but within the municipality).
- 2. After subtracting any exclusions permitted in (b)1 above, the municipality shall have an obligation of one affordable housing unit among five residential units projected to be constructed. For the purpose of calculating the projected growth share obligation, the municipality shall divide the resulting total units by five. The projected residential growth share obligation shall not go below zero.
- (b) A municipality shall determine the non-residential component of its projected growth share obligation for the period January 1, 2004 to December 31, 2018 based on the employment projections provided in Appendix F, unless municipal projections are utilized pursuant to N.J.A.C. 5:97-*[2.2(d)]**2.3(d)*. If municipal projections are utilized, the growth share obligation shall be determined pursuant to N.J.A.C. 5:97-2.5(a) through (c).
- 1. In determining its projected non-residential growth share obligation, a municipality may fully or partially subtract from its employment projection, non-residential development that, as a condition of preliminary or final site plan approval granted prior to January 1, 2004 or as a stipulation included in a developer's agreement executed prior to January 1, 2004, was required to specifically address a portion of a municipality's first or second round obligation or an obligation determined by the court. Such non-residential development may be excluded at a rate of 16 jobs for every

one affordable unit addressed within the municipality as measured by new or expanded non-residential construction. Jobs shall be measured by use group pursuant to chapter Appendix D.

- 2. After subtracting any exclusions permitted in (b)1 above, the municipality shall have an obligation of one affordable housing unit for every 16 jobs projected. For the purpose of calculating the growth share obligation, the municipality shall divide the resulting total jobs by 16. The non-residential projected growth share obligation shall not go below zero.
- (c) The projected residential growth share obligation calculated pursuant to (a) above shall be added to the projected non-residential growth share obligation calculated pursuant to (b) above to determine a total projected growth share obligation.
- 5:97-2.5 Measuring the actual growth share obligation
- (a) A municipality's actual residential growth share obligation shall be measured based upon permanent market-rate residential certificates of occupancy issued within the municipality between January 1, 2004 and December 31, 2018.
- 1. In determining the actual residential growth share obligation, the following may be subtracted from the number of market rate certificates of occupancy issued:
- i. Units included in the exclusions permitted by N.J.A.C. 5:97-2.4(a)1*ii* that have been issued certificates of occupancy;
- ii. Certificates of occupancy issued for continuing care retirement communities, dormitories, hotels and motels classified as R1 or R2 by the Uniform Construction Code (UCC). These certificates of occupancy shall be included in the non-residential growth share obligation calculated pursuant to (b) below;
- iii. Certificates of occupancy issued for graduate student housing owned and/or operated by an institution of higher education and farm labor housing constructed on a commercial farm as defined by the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., and classified as R2, R3, or R5 by the Uniform Construction Code (UCC); and
- iv. Additional market-rate rental units in an inclusionary or mixed-use development pursuant to N.J.A.C. 5:97-6.4(b)6ii where the affordable housing units are rental units that are addressing a municipality's growth share obligation.
- 2. (No change.)
- (b) A municipality's actual non-residential growth share obligation shall be measured based upon the square footage of non-residential development converted to jobs based on the use group ratios provided in chapter Appendix D.
- 1. In determining the actual non-residential growth share obligation, the municipality shall measure the jobs gained based on the square footage authorized by permanent certificates of occupancy issued for new or expanded non-residential development for each use group in Appendix D, including continuing care retirement communities, dormitories, hotels and motels classified as R1 or R2 within the municipality between January 1, 2004 and December 31, 2018.
- 2. In determining the actual non-residential growth share obligation, the following may be subtracted from the total jobs in (b)1 above:
- i. (No change.)
- ii. Jobs resulting from an increase in floor area for a mixed-use development pursuant to N.J.A.C. 5:97-6.4(b)9 that

occurs after January 1, 2004, provided the required affordable units were constructed on-site;

- iii. Jobs resulting from an increase in floor area for a non-residential development pursuant to N.J.A.C. 5:97-6.4(b)8 that occurs after January 1, 2004;
- iv. Jobs lost based on demolition permits issued by square footage of non-residential structures for each use group in Appendix D, provided the structure was occupied at least one year prior to demolition; and
- v. The equivalent number of jobs, as measured by use group in Appendix D, associated with the relocation of a hospital and/or nursing home from another municipality within the same housing region based upon the replacement square footage. Additional jobs, as measured by use group in Appendix D, resulting from an expansion and/or addition of the relocated hospital and/or nursing home shall not be exempt from a municipality's growth share obligation.
- 3. (No change.)
- (c)-(e) (No change.)
- 5:97-3.2 Content of a Fair Share Plan
- (a) A Fair Share Plan describes the completed or proposed mechanisms and funding sources, if applicable, that will be utilized to specifically address a municipality's rehabilitation share, prior round obligation, and growth share obligation. The Fair Share Plan shall be in a form provided by the Council and include at least the following:
- 1.-3. (No change.)
- 4. An implementation schedule that sets forth a detailed timetable that demonstrates a "realistic opportunity" as defined under N.J.A.C. 5:97-1.4 and a timetable for the submittal of all information and documentation required by N.J.A.C. 5:97-6, based on the following:
- i. (No change.)
- ii. Documentation for zoning for inclusionary development, an accessory apartment program, or a market to affordable program shall be submitted at the time of petition and implemented within 45 days of substantive certification;
- iii. Documentation for the extension of expiring controls shall be submitted at the time of petition and implemented in accordance with an implementation schedule pursuant to (a)4iv below; and
- iv. Documentation for all mechanisms not included in (a)4i through iii above shall be submitted according to an implementation schedule, but no later than two years prior to scheduled implementation of the mechanism, and shall consider the economic viability of the mechanisms and the actual growth share obligation that has or will occur as calculated pursuant to N.J.A.C. 5:97-2.5. Pursuant to N.J.A.C. 5:97-2.5(d), the municipality shall comply with the plan evaluation requirements and shall be subject to the enforcement remedies of N.J.A.C. 5:96-10.4.
- 5. Notwithstanding (a)4iv above, a municipality with insufficient vacant land that has been granted or is seeking a vacant land adjustment pursuant to N.J.A.C. 5:97-5.1 or a household and employment growth projection adjustment pursuant to N.J.A.C. 5:97-5.6 shall submit all information and documentation required by N.J.A.C. 5:97-6 at the time of petition, unless it meets the requirements of (a)5i and ii below, in which case it shall submit the required information and documentation in accordance with an implementation schedule, but no later than two years prior to scheduled implementation of the mechanism, and shall consider the economic viability of the mechanisms and the actual growth share obligation that has or will occur as calculated pursuant to N.J.A.C. 5:97-2.5. Pursuant to N.J.A.C. 5:97-2.5(d), the

municipality shall comply with [page=6057] the plan evaluation requirements and shall be subject to the enforcement remedies of N.J.A.C. 5:96-10.4.

- i. The municipality demonstrates that the mechanism(s) does not rely upon the availability of vacant land (that is, redevelopment); or
- ii. (No change.)
- 6.-9. (No change.)
- (b) (No change.)
- 5:97-3.4 Rental housing requirement
- (a) (No change.)
- (b) At least 50 percent of the rental housing requirement for the projected growth share obligation addressed within a municipality shall be met with family housing in the Fair Share Plan.
- (c) The plan for a rental housing component may include, but not necessarily be limited to, any combination of the following:
- 1.-5. (No change.)
- 6. Agreements with developers to construct and administer affordable rental units as part of an inclusionary development or redevelopment area, or development application approvals wherein the developer has committed to develop affordable rental housing;
- 7. The transfer of the rental obligation via an RCA pursuant to N.J.A.C. 5:97-7, provided the RCA Project Plan provides for the creation or reconstruction of new rental units in the receiving municipality; and/or
- 8. The extension of expiring controls on affordable rental units pursuant to N.J.A.C. 5:97-6.14.
- (d) The rental obligation for the growth share obligation shall be provided in proportion to the actual growth share obligation measured pursuant to N.J.A.C. 5:97-2.5, or in accordance with an implementation schedule that sets forth a detailed timetable for units to be provided and demonstrates a realistic opportunity pursuant to N.J.A.C. 5:97-3.2(a)4, and monitored during plan evaluation review pursuant to N.J.A.C. 5:96-10.
- (e) Rental units in excess of the prior round rental obligation may be eligible to satisfy the third round rental housing requirement provided the units satisfy the requirements of N.J.A.C. 5:97-4.1(a) and have affordability controls extending at least through 2018.
- 5:97-3.5 Rental bonuses for the prior round obligation
- (a) A municipality may receive two units of credit for each rental unit addressing its prior round rental obligation, provided the unit was or will be created and occupied in the municipality or received preliminary or final approval, on or after December 15, 1986, is not age-restricted and has controls on affordability for at least 30 years. No rental bonuses shall be granted for rental units in excess of the prior round rental obligation.
- (b) A municipality may receive 1.33 units of credit for each age-restricted rental unit addressing its prior round rental

- obligation, provided the unit was or will be created and occupied in the municipality or received preliminary or final approval, on or after December 15, 1986, and has controls on affordability for at least 30 years. No rental bonuses shall be granted for age-restricted rental units in excess of 50 percent of the prior round rental obligation.
- (c) If the affordable units have not been constructed as of the date of petition, the municipality shall submit evidence of a firm commitment for the construction of the units in conformance with N.J.A.C. 5:94-3.6(a)3ii.
- 5:97-3.6 Rental bonuses for the growth share obligation
- (a) A municipality may receive bonuses for rental units in excess of its growth share rental obligation subject to the following:
- 1.-2. (No change.)
- 3. The unit meets one of the following conditions:
- i. The unit was or will be created and occupied in the municipality or received preliminary or final approval, after June 6, 1999; or
- ii. The municipality has provided or received a firm commitment for the construction of the unit. A municipality may lose the rental bonus if the municipality has not constructed the rental unit within the time period established as a condition of substantive certification; has not granted preliminary or final approval for the construction of the rental unit within the time period established as a condition of substantive certification; or if the preliminary or final approval is no longer valid.
- 4. A minimum of 50 percent of the rental housing requirement has been addressed with family rental units provided pursuant to N.J.A.C. 5:97-6.4, 6.5, 6.6, 6.7, 6.9, 6.13, 6.14 or 6.15.
- 5:97-3.7 Very low income bonuses for the growth share obligation
- (a) A municipality may receive two units of credit for each affordable unit addressing its growth share obligation that was or will be created and occupied in the municipality or received preliminary or final approvals, after June 6, 1999 and is deed restricted to be affordable and only available to a very low income household, provided that, in the case of rental housing, only very low income rental units in excess of 10 percent of the total number of affordable units shall be eligible for a bonus.
- (b) (No change.)
- (c) If the unit has not been constructed as of the date of petition, the municipality shall submit evidence of a firm commitment for the construction of the unit in conformance with N.J.A.C. 5:94-3.6(a)3ii.
- 5:97-3.13 Site suitability criteria and consistency with the State Development and Redevelopment Plan
- (a) Sites designated to produce affordable housing shall be available, approvable, developable and suitable, according to the following criteria:
- 1.-2. (No change.)
- 3. Adequate sewer and water capacity, as defined under N.J.A.C. 5:97-1.4, shall be available to the site or the site is subject to a durational adjustment pursuant to N.J.A.C. 5:97-5.4; and

- 4. The site can be developed consistent with the Residential Site Improvement Standards, N.J.A.C. 5:21, where applicable. Deviations from those standards are to be done in accordance with N.J.A.C. 5:21-3.
- (b) Sites designated to produce affordable housing shall be consistent with the State Development and Redevelopment Plan and shall be in compliance with the rules and regulations of all agencies with jurisdiction over the site, including, but not limited to:
- 1. (No change.)
- 2. Municipalities or developers proposing sites located in Planning Areas 3, 4, 4B, 5 or 5B that are not within a designated center or an existing sewer service area shall demonstrate to the Council that the site is consistent with sound planning principles and the goals, policies and objectives of the State Development and Redevelopment Plan. The Council may seek a recommendation from the Executive Director of the Office of Smart Growth on the consistency of the site with sound planning principles and the goals, policies and objectives of the State Development and Redevelopment Plan.
- 3. (No change.)
- 4. The portions of sites designated for construction shall adhere to wetland constraints as delineated on the New Jersey DEP Freshwater Wetlands Maps or as delineated on-site by the U.S. Army Corps of Engineers or DEP, whichever agency has jurisdiction as regulated pursuant to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) or Section 404 of the Federal Clean Water Act (33 U.S.C. §§1251 through 1375); Category One waterway constraints pursuant to N.J.A.C. 7:9B, 7:8, 7:13 and 7:15; flood hazard constraints as defined in N.J.A.C. 7:13; and steep slope constraints in excess of 15 percent if the municipality has an ordinance in place that uniformly regulates steep slope development throughout the municipality.
- 5. (No change.)
- (c) (No change.)
- 5:97-3.14 Accessible and adaptable affordable units
- (a) The first floor of all new townhouse dwelling units and of all other new multistory dwelling units that are attached to at least one other dwelling unit for which an application for a construction permit has not been declared complete by the enforcing agency before October 1, 2006, shall be subject to this section and the technical design standards of the Barrier Free Subcode at N.J.A.C. 5:23-7, provided the units are included in a municipal Fair Share Plan.
- (b) The municipality shall demonstrate the following features regarding townhouses or other multistory dwelling units that are attached to at least one other dwelling unit, provided the units are included in a municipal Fair Share Plan:
- 1.-5. (No change.)
- (c)-(e) (No change.)

[page=6058] 5:97-3.16 Coordination with other State agencies

(a) Municipalities that have petitioned the Council for substantive certification are encouraged to seek plan endorsement from the State Planning Commission and shall include a status of the application with their petitions if participating in the plan endorsement process.

- (b) (No change.)
- (c) Municipalities are encouraged to work with regional planning commissions and authorities to address municipal affordable housing obligations on a regional level.
- (d) The Fort Monmouth Economic Revitalization Planning Authority (FMERPA) or its successor entity is authorized to address all or a portion of the affordable housing obligation of Oceanport Borough, Tinton Falls Borough and Eatontown Borough, Monmouth County in the form outlined in N.J.A.C. 5:97-6.13, the Affordable Housing Partnership Program. The FMERPA may address these obligations in accordance with N.J.A.C. 5:97-6.13 or in another manner consistent with these rules.
- (e) The New Jersey Meadowlands Commission (NJMC) is authorized to address a portion of the municipal affordable housing obligation generated by growth occurring within the 14 municipalities in its jurisdiction in the form outlined in N.J.A.C. 5:97-6.13, the Affordable Housing Partnership Program. The NJMC is encouraged to adopt rules consistent with these rules in order to assist the 14 municipalities in its jurisdiction in addressing municipal affordable housing obligations. The NJMC may address these obligations in accordance with N.J.A.C. 5:97-6.13 or in another manner consistent with these rules.

5:97-3.17 Compliance bonus

- (a) A municipality may receive two units of credit for each affordable housing unit that has been included in a development that received preliminary or final approval, or was the subject of an executed *developer's agreement or* redevelopment agreement, between December 20, 2004 and June 2, 2008 when:
- 1. The zoning ordinance authorizing the development, 100 percent affordable development, or the proposed redevelopment was included as an affordable housing mechanism to address the growth share obligation in a third round petition for substantive certification submitted to Council prior to January 25, 2007, pursuant to N.J.A.C. 5:95;
- 2. The development approval or executed *developer's agreement or* redevelopment agreement provides for the affordable housing units to be built on site; and
- 3. The affordable housing units are eligible for credit pursuant to N.J.A.C. *[5:96-4]**5:97-4*.

5:97-3.18 Smart growth bonus

- (a) A municipality may receive 1.33 units of credit for each affordable housing unit addressing its growth share obligation that was or will be created and occupied in the municipality or received preliminary or final approval, after June 6, 1999 that is included in a Transit Oriented Development in a Planning Area 1, 2 or a designated center when:
- 1. The preliminary and/or final approval provides for a minimum set-aside of 20 percent of the total number of units in the development;
- 2. The affordable units are provided on-site;
- 3. At least 50 percent of the affordable units are family units; and
- 4. The development meets the zoning criteria pursuant to N.J.A.C. 5:94-6.4.
- (b) If the affordable units have not been constructed as of the date of petition, the municipality shall submit evidence of

a firm commitment for the construction of the units in conformance with N.J.A.C. 5:94-3.6(a)3ii.

5:97-3.19 Redevelopment bonus

- (a) A municipality may receive 1.33 units of credit for each affordable housing unit addressing its growth share obligation that was or will be created and occupied in the municipality or received preliminary or final approval, after June 6, 1999 that is included in a designated redevelopment area *or rehabilitation area* pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., when:
- 1. The preliminary and/or final approval provides for a minimum set-aside of 15 percent of the total number of units in the development, unless the development meets the criteria of N.J.A.C. 5:97-3.15. In this case, the development shall have a minimum 20 percent affordable housing set-aside, to the extent economically feasible;
- 2. The affordable units are provided on-site;
- 3. At least 50 percent of the affordable units are family units; and
- 4. The development meets the redevelopment criteria pursuant to N.J.A.C. 5:97-6.6.
- (b) If the affordable units have not been constructed as of the date of petition, the municipality shall submit evidence of a firm commitment for the construction of the units in conformance with N.J.A.C. 5:94- 3.6(a)3ii.
- 5:97-3.20 Bonus caps
- (a) In no event shall a municipality receive more than one type of bonus for each unit (for example, a very-low income bonus or a rental bonus for one unit).
- (b) In no event shall the total number of bonuses for the growth share obligation granted in a municipal fair share plan exceed 25 percent of the projected growth share obligation.

SUBCHAPTER 4. CREDITS

- 5:97-4.1 General
- (a)-(b) (No change.)
- (c) All credits shall be subject to the applicable formulas set forth in N.J.A.C. 5:97-3. In the case of municipalities that received second round substantive certification or judgment of compliance, the Council shall honor the number of age-restricted credits, the credits addressing the rental requirement and RCA credits included in the previously certified plan or judgment of compliance if the mechanisms that were included in that certification or judgment still present a realistic opportunity pursuant to N.J.A.C. 5:97-6.5.
- (d) (No change.)
- 5:97-4.3 Post-1986 credits
- (a) A municipality may receive one credit for each affordable housing unit within an inclusionary development, a municipally sponsored development or a 100 percent affordable development, subject to the applicable provisions of this subsection.

- 1. Affordable units that received preliminary or final approvals on or after December 15, 1986 and before June 6, 1994 shall meet the following criteria:
- i.-iii. (No change.)
- 2. Affordable units that received preliminary or final approvals on or after June 6, 1994 and before October 1, 2001 shall meet the following criteria:
- i.-iii. (No change.)
- 3. Affordable units that received preliminary or final approvals on or after October 1, 2001 and before December 20, 2004 shall meet the following criteria:
- i.-iii. (No change.)
- 4. Affordable units created and occupied on or after December 20, 2004 shall meet the criteria in N.J.A.C. 5:97-6.4, 6.6 or 6.7, as applicable.
- (b) (No change.)
- (c) A municipality may receive one credit for each bedroom in supportive and/or special needs housing (formerly known as alternative living arrangements), subject to the applicable provisions of this subsection.
- 1. Supportive and special needs housing created and occupied on or after December 15, 1986 and before December 20, 2004 shall meet the following criteria;
- i. Supportive and special needs housing may include: transitional housing, Class A, B, C, D, and E boarding homes as licensed and/or regulated by the New Jersey Department of Community Affairs and/or the New Jersey Department of Health and Senior Services; residential health care facilities as licensed and/or regulated by DCA or the New Jersey Department of Health and Senior Services if the facility is located with, and operated by, a licensed health care facility; group homes for people with developmental disabilities and/or mental illness as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements; and
- ii. (No change.)

[page=6059] 2. Supportive and special needs housing created and occupied after December 20, 2004 and before June 2, 2008 shall meet the criteria in N.J.A.C. 5:97-6.10, with the following exception:

- i. (No change.)
- 3. (No change.)
- (d) A municipality may receive one credit for each apartment in an assisted living residence that received preliminary or final approvals on or after December 15, 1986, subject to the provisions of N.J.A.C. 5:97-6.11.
- (e) (No change.)
- (f) A municipality may receive one credit for each affordable unit that received preliminary or final approvals on or after December 20, 2004 through an affordable housing partnership program, subject to the provisions of N.J.A.C. 5:97-6.13.

- (g) (No change.)
- (h) Any affordable units where funding was allocated for construction by the Low-Income Housing Tax Credit Program (Internal Revenue Code Section 42h) or Balanced Housing Program (N.J.A.C. 5:43) during the period beginning on or after December 15, 1986 and before June 6, 1999, and not included in a Housing Element and Fair Share Plan submitted to the Council as of May 6, 2008, shall not be eligible for credit against any portion of the fair share obligation.
- 5:97-4.5 Rehabilitation credits
- (a)-(b) (No change.)
- (c) Units rehabilitated or subject to an executed contract for rehabilitation on or after December 20, 2004 and before June 2, 2008 shall meet the criteria in (b)1 and 2 and 4 through 6 above and the following:
- 1. The units were subject to 10-year controls on affordability on both owner-occupied units and rental units. On owner-occupied units, the controls on affordability may have been in the form of a lien filed with the appropriate property's deed. For rental units, the controls on affordability shall have been in the form of a deed restriction and may have also included a lien pursuant to N.J.A.C. 5:97-6.2(c).
- (d) Units rehabilitated or subject to an executed contract for rehabilitation on or after June 2, 2008 shall meet the criteria in N.J.A.C. 5:97-6.2.

Recodify existing (d)-(g) as (e)-(h) (No change in text.)

- 5:97-5.1 Vacant land adjustment applicability
- (a) (No change.)
- (b) A municipality that is requesting a vacant land adjustment for the first time or whose vacant land adjustment was not granted as part of a second round substantive certification, shall apply its eligible credits pursuant to N.J.A.C. 5:97-4 for units that are constructed or have received preliminary or final approvals, as applicable, prior to June 6, 1999 toward its unmet need at the time of petition prior to applying credits toward its realistic development potential or growth share obligation. Units that are constructed or have received preliminary or final approvals after June 6, 1999 may be applied to the RDP or unmet need, provided the unit was not a mechanism previously included in the plan to address unmet need. Municipalities may apply credits for units constructed or received preliminary or final approvals after June 6, 1999 to the growth share obligation provided credits have first been applied to the RDP.
- (c)-(e) (No change.)
- 5:97-5.2 Vacant land adjustment procedures
- (a)-(b) (No change.)
- (c) The municipality shall submit the following:
- 1.-5. (No change.)
- 6. An inventory of any areas in the municipality that may develop or redevelop. Examples of such areas include, but are not limited to: a private club owned by its members; publicly owned land; downtown mixed use areas; high density

residential areas surrounding the downtown; areas with a large aging housing stock appropriate for accessory apartments; properties that may be subdivided and support additional development; and any parcel(s) that has the potential to be redeveloped.

- (d) The inventory of vacant parcels shall be listed by lot and block and include the address, acreage, current zoning (residential or non-residential), Planning Area, whether the lot is in a sewer service area, and owner of each lot. The municipality shall list contiguous parcels next to each other. The inventory shall also list the amount of acreage that is suitable for development and the amount of acreage that is unsuitable for development and the reasons why the acreage is unsuitable based on the following criteria:
- 1.-3. (No change.)
- 4. Environmentally sensitive lands as follows:
- i. (No change.)
- ii. In areas of the State not regulated by the Pinelands Commission, Highlands Water Protection and Planning Council, Land Use Regulation Division of DEP and the New Jersey Meadowlands Commission, municipalities may exclude sites based on: wetland constraints as delineated on the New Jersey Freshwater DEP Wetlands Maps or as delineated on-site by the U.S. Army Corps of Engineers or DEP, whichever agency has jurisdiction as regulated pursuant to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) or Section 404 of the Federal Clean Water Act (33 U.S.C. §§1251 through 1375); Category One waterway constraints pursuant to N.J.A.C. 7:9B, 7:8, 7:13 and 7:15; flood hazard constraints as defined in N.J.A.C. 7:13; and sites with slopes in excess of 15 percent, as determined from the U.S.G.S. Topographic Quadrangles, which render a site unsuitable for low- and moderate-income housing. In the case of slopes in excess of 15 percent, a municipality may regulate inclusionary development through a steep slope ordinance, provided the ordinance also regulates non-inclusionary developments in a consistent manner.
- iii. (No change.)
- 5.-7. (No change.)
- (e) The Council shall review the existing land use map, tax map, master plan(s) and land inventory to determine consistency with this section and reserves the right to include additional vacant and non vacant sites that were excluded by the municipality. Such examples include those listed in (c)4 above. In the case of non vacant sites pursuant to (c)4 above, the Council may request a letter from the owner of the site indicating the site's availability for inclusionary development.
- (f)-(g) (No change.)
- (h) The Council shall consider sites, or parts thereof, not specifically eliminated from the inventory, for inclusionary development. The Council shall consider the character of the area surrounding each site and the need to provide housing for low and moderate income households in establishing densities and set-asides for each site, or part thereof, remaining in the inventory. The Council shall also rely on the appropriate regulating agency's regulations regarding development capacity of the site, including the density, when determining RDP. The minimum presumptive density shall be six units per acre and the maximum presumptive set-aside shall be 20 percent. The density and set-aside of each site shall be summed to determine the RDP of each municipality.

Example: Johnsonville Borough has three suitable sites. The sites are 10 acres, five acres and one acre. The larger sites may accommodate eight units/acre. The one acre site may accommodate six units/acre. All sites are assigned a 20 percent set-aside. The RDP equals 25 low and moderate income units.

| 10 acres | X | 8 units/acre | X | .2 | = | 16 |
|----------|---|--------------|---|----|---|----|
| 5 acres | X | 8 units/acre | X | .2 | = | 8 |
| 1 acre | X | 6 units/acre | X | .2 | = | 1 |
| | | RDP | | | = | 25 |

(i)-(k) (No change.)

5:97-5.3 Unmet need

- (a) (No change.)
- (b) If the municipality has an unmet need, the Council shall review the existing municipal land use map and inventory pursuant to N.J.A.C. 5:97-5.2(c)6 for areas that may develop or redevelop. After such an analysis, the Council may require one or any combination of the following in an effort to address the unmet need:
- 1.-5. (No change.)
- 6. Age-restricted units and RCAs may be applied to unmet need subject to the formulas in N.J.A.C. 5:97-3, except that age-restricted units [page=6060] to address unmet need that were included in the municipality's prior round certification or judgment and are constructed or have preliminary or final approvals at the time of the municipality's petition are not subject to the formulas in N.J.A.C. 5:97-3.
- (c) (No change.)
- 5:97-5.4 Durational adjustment
- (a) A municipality may request a durational adjustment for a site addressing its prior round obligation or its projected growth share obligation for the first time in accordance with (e) through (h) below.
- (b)-(f) (No change.)
- (g) The Council shall require the site(s) to be zoned for inclusionary development pursuant to N.J.A.C. 5:97-6.4, or, if the site(s) had already been zoned for inclusionary development, the Council shall require the continuation of that zoning.
- (h) The lack of adequate capacity, in and of itself, shall constitute a durational adjustment of the prior round obligation. The requirement to address the portion of the prior round obligation with such site(s) shall be deferred until adequate water and/or sewer are made available. The requirement to plan for the projected growth share obligation pursuant to N.J.A.C. 5:97-1.1(c) shall be addressed by zoning the site pursuant to (g) above. In order to provide water and/or sewer on sites the Council determines are realistic for inclusionary development, municipalities shall adhere to the following:

1.-3. (No change.)

- 4. Where a municipality has designated site(s) for low- and moderate-income housing that lack adequate water and/or sewer and where the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low- and moderate-income housing in the Fair Share Plan, the municipality shall amend its Housing Element and Fair Share Plan and applicable zoning ordinances to permit development of such site for low- and moderate-income housing. The amended Housing Element and Fair Share Plan and zoning ordinances shall be submitted to the Council within 90 days of the site's approval by the DEP or its agent. The Council may waive these requirements when it determines that the municipality has a plan that will provide water and/or sewer to sufficient sites to address the prior round or projected growth share obligation within the substantive certification period.
- (i) No durational adjustment shall be provided for a municipality's actual growth share obligation.
- 5:97-5.6 Adjustment of household and employment growth projections
- (a) A municipality may request an adjustment to its household and employment projections provided in chapter Appendix F utilized to project the municipal growth share obligation, based on an analysis of existing land capacity. In reviewing the request, the Council shall consider both residential and non-residential land capacity regardless of the adjustment sought.
- (b) (No change.)
- (c) The municipality shall submit the information required by N.J.A.C. 5:97-5.2(c) and (d), but may not exclude sites pursuant to N.J.A.C. 5:97-5.2(d)2. Municipalities may exclude from the inventory sites that cannot accommodate one housing unit. However, a growth share obligation shall still accrue on any excluded parcels if market-rate growth occurs on those parcels, as monitored pursuant to N.J.A.C. 5:96-10. If the municipality was previously granted or is requesting a vacant land adjustment pursuant to N.J.A.C. 5:97-5.1, sites utilized to determine the RDP shall be excluded from the inventory.
- (d) (No change.)
- (e) The Council shall generally utilize the municipality's zoning to determine whether to assign the residential or non-residential density to each site remaining in the inventory. The Council shall consider the character of the area surrounding each site in establishing densities for each site, or part thereof, remaining in the inventory. The Council shall also rely on the appropriate regulating agency's regulations regarding development capacity of the site, including the density. The Council shall assign the following densities to the remaining sites in the inventory:
- 1. Land in Urban Centers, as designated or identified by the State Planning Commission, shall have a minimum presumptive density of 22 units per acre for residential sites and 220 jobs per acre for non-residential sites;
- 2. Land in Planning Area 1 shall have a minimum presumptive density of eight units per acre for residential sites and 80 jobs per acre for non-residential sites;
- 3. Land in Planning Area 2 and centers shall have a minimum presumptive density of six units per acre for residential sites and 60 jobs per acre for non-residential sites;
- 4. Land in existing or proposed sewer service areas outside of Planning Areas 1 or 2 shall have a minimum presumptive density of four units per acre for residential sites and 40 jobs per acre for non-residential sites; and

- 5. Land outside of a sewer service area in Planning Areas 3, 4 and 5 shall have a minimum presumptive density for residential sites that is established in DEP's Water Quality Management Planning rules (N.J.A.C. 7:15) 2.0 mg/L nitrate dilution standards. The minimum presumptive density for non-residential sites shall be established by applying a conversion factor of 4,000 square feet for every housing unit prescribed by the residential densities in N.J.A.C. 7:15. The resulting non-residential square footage shall be divided by 1,000 and multiplied by two to determine the number of jobs per acre. The Council shall publish the residential and converted non-residential densities for each Hydrologic Unit Code 11 (HUC-11) watershed on its website. The Council shall apply the appropriate residential/non-residential density (depending on whether it is zoned residential or non-residential) based on which HUC-11 watershed the site is located in.
- (f) These adjusted housing and employment growth projections shall be added back to the actual growth for the period January 1, 2004 to the date of petition. If the result exceeds the growth projections shown in Appendix F, no change will be made to the projections utilized for the purpose of projecting the growth share obligation pursuant to N.J.A.C. 5:97-2.4. If the result is less than the growth projections shown in Appendix F by greater than 10 percent, the projections utilized for the purpose of projecting the growth share obligation pursuant to N.J.A.C. 5:97-2.4 may be adjusted downward. However, the municipality shall not apply the adjustment to its actual growth share obligation measured pursuant to N.J.A.C. 5:97-2.5. If the actual growth share obligation is less than the adjusted projected growth share obligation, the municipality shall continue to provide a realistic opportunity for affordable housing to address the adjusted projected growth share.

Example: Johnsonville Borough has five sites that are suitable for development, totaling 20 acres. Three of the sites are zoned for residential development and two are zoned for non-residential development. All five sites are located in a sewer service area. Two of the residential sites are located in Planning Area 1 and may accommodate eight units per acre and one residential site is located in Planning Area 2 and may accommodate six units per acre. Both non-residential sites are located in Planning Area 2 and may accommodate 60 jobs per acre. The resulting household projection is 103 units and the employment projection is 420 jobs.

Household Adjustment

| 8 acres | X | 8 units/acre | = | 64 |
|-----------|---|--------------|---|-----|
| 4.5 acres | X | 8 units/acre | = | 36 |
| 0.5 acre | X | 6 units/acre | = | 3 |
| | | TOTAL | = | 103 |

Employment Adjustment

| 4 acres | X | 60 jobs/acre | = | 240 |
|---------|---|--------------|---|-----|
| 3 acres | X | 60 iobs/acre | = | 180 |

TOTAL = 420

When added to the Borough's actual growth of 31 units, the projected household growth through 2018 is 134 units. The total jobs resulting from the square footage of actual non-residential development to date is 65, resulting in projected employment growth through 2018 of 485 jobs.

[page=6061] 5:97-5.7 Potential growth share opportunities

- (a) Municipalities that request an adjustment to household and employment growth projections shall evaluate the existing municipal land use map and inventory for areas that may develop or redevelop to identify additional opportunities that may accommodate growth and corresponding affordable housing. In response to the municipal evaluation, the Council may require one or any combination of the following to address potential growth share opportunities:
- 1.-5. (No change.)
- (b) (No change in text.)
- 5:97-5.8 1,000-unit limitation
- (a) No municipality shall be required to plan for a projected growth share obligation beyond 1,000 units within 10 years from the grant of substantive certification, unless it is demonstrated, following an objection and an evidentiary hearing, based upon the facts and circumstances of the affected municipality, that it is likely that the municipality through its zoning powers could create a realistic opportunity for more than 1,000 low- and moderate-income units within the 10-year period. The facts and circumstances which shall determine whether a municipality's projected growth share shall exceed 1,000 units shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential units in the 10-year period preceding the petition for substantive certification.
- (b) A municipality that seeks a 1,000-unit limitation shall first subtract from its projected growth share obligation all credits and associated bonuses pursuant to N.J.A.C. 5:97-4 that are proposed to address the growth share obligation to determine if the municipality is eligible for the 1,000-unit limitation. A municipality that is eligible for a 1,000-unit limitation may then submit a Housing Element and Fair Share Plan that provides for a realistic opportunity for affordable housing to address the 1,000-unit projected growth share obligation.
- (c) Pursuant to N.J.A.C. 5:97-2.5(d), the municipality shall comply with the plan evaluation requirements and shall be subject to the enforcement remedies of N.J.A.C. 5:96-10.4. If the actual growth share obligation exceeds the 1,000-unit projected growth share obligation, the municipality shall be responsible for addressing the actual growth share obligation determined pursuant to N.J.A.C. 5:97-2.5.
- (d) If the actual growth share obligation determined in N.J.A.C. 5:97-2.5 is less than the 1,000-unit projected growth share obligation, the municipality shall continue to provide a realistic opportunity for affordable housing to address the 1,000-unit projected growth share obligation, through inclusionary zoning or any of the mechanisms permitted by N.J.A.C. 5:97-6.

5:97-6.2 Rehabilitation

(a) The purpose of a rehabilitation program is to renovate deficient housing units that are occupied by low- and

moderate-income households. The estimate of each municipality's deficient units occupied by low- and moderate-income households as determined through the methodology provided in chapter Appendix B. This rehabilitation number may also be provided through a survey of the municipal housing stock conducted in accordance with the exterior housing survey available on the Council's website. Where the municipality or objector performs the exterior housing survey, the Council shall review the results of the data collected and shall modify the rehabilitation share number if it determines a modification is warranted.

- (b) The following provisions shall apply to a rehabilitation program:
- 1.-6. (No change.)
- 7. Pursuant to N.J.A.C. 5:97-4.3, units that are eligible to receive new construction credit may be used to address a municipal rehabilitation share.
- (c)-(f) (No change.)
- (g) A municipality receiving State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.) may seek a waiver from addressing its entire rehabilitation component in one 10-year period of substantive certification. A municipality seeking such a waiver shall demonstrate that it cannot rehabilitate the entire rehabilitation component in 10 years and/or that an extraordinary hardship exists, related to addressing the entire rehabilitation component in 10 years.
- 5:97-6.4 Zoning for inclusionary development
- (a) Affordable housing units proposed through inclusionary development shall be provided through zoning for development that includes a financial incentive to produce the affordable housing, including but not limited to increased densities and reduced costs to the developer. Inclusionary zoning may apply to all or some zones or sites within the municipality. Financial incentives may provide for a range of opportunities to induce affordable housing production at varying levels provided the compensatory benefits minimally meet the criteria set forth in this section.
- (b) The following provisions presumptively apply to each site or zone proposed for inclusionary development:
- 1. (No change.)
- 2. To ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, inclusionary zoning shall permit minimum presumptive densities and presumptive maximum affordable housing set-asides as follows:
- i. Inclusionary zoning in Planning Area 1 shall permit residential development at a presumptive minimum gross density of eight units per acre and a presumptive maximum affordable housing set-aside of 25 percent of the total number of units in the development;
- ii. Inclusionary zoning in Planning Area 2 and designated centers shall permit residential development at a presumptive minimum gross density of six units per acre and a presumptive maximum affordable housing set-aside of 25 percent of the total number of units in the development;
- iii. Inclusionary zoning in existing or proposed sewer service areas outside of Planning Areas 1 or 2 shall permit residential development at a presumptive minimum gross density of four units per acre and a presumptive maximum affordable housing set-aside of 25 percent of the total number of units in the development;
- iv. Inclusionary zoning outside of a sewer service area in Planning Areas 3, 4 and 5 shall permit a presumptive density

increase of 40 percent over the existing zoning. The presumptive maximum affordable housing set-aside shall be 20 percent of the total number of units in the development; and

- v. Inclusionary zoning in Urban Centers, as designated or identified by the State Planning Commission, shall permit residential development at a presumptive minimum gross density of 22 units per acre and a presumptive maximum affordable housing set-aside of 20 percent of the total number of units in the development.
- 3. Inclusionary zoning shall ensure sufficient incentives for the provision of affordable housing. The Council shall generally accept such zoning as providing a realistic opportunity for the creation of affordable housing when at least one of the following conditions is met:
- i. The zoning provides for the presumptive densities and set-asides pursuant to the provisions of (b)2 above;
- ii. The municipality has submitted a fully executed agreement between the municipality and the developer or redeveloper setting forth mutually agreed to terms for the production of the required affordable housing or a planning board resolution approving the development and setting forth requirements for the production of the affordable housing; or
- iii. The site or district was previously zoned specifically to address a prior round obligation at a minimum gross density of six units per acre with a 20 percent set-aside, a gross density of five units per acre with a 17.5 percent set-aside, a gross density of four units per acre with a 15 percent set-aside for single family detached units, or a gross density of 10 units per acre with a 15 percent set-aside for rental housing.
- 4. Bulk standards shall minimally reflect a decrease in lot size and lot width requirements for both affordable and market-rate units in an inclusionary zone to enable the additional number of permitted units to fit on the site without the need for variances. Attached single family housing, clustering and/or lot-size averaging shall be permitted in such inclusionary zones located both within and outside of a sewer service area, as necessary to accommodate the additional number of units. Municipalities shall also evaluate the zoning to determine whether reduced setbacks, increased building heights and/or additional stories must be permitted to accommodate the increased number of units;
- [page=6062] 5. Additional incentives to subsidize the creation of affordable housing available to very-low income households may be included in the zoning ordinance or specified in a developer's or redeveloper's agreement;
- 6. Inclusionary zoning may be established to encourage the production of affordable rental units by providing the option for the site to be developed as sale or rental housing with a density increase if the developer chooses to build rental housing The Council shall generally accept such zoning as providing a realistic opportunity for the creation of affordable rental housing when at least one of the following conditions are met with regard to the rental option:
- i. Inclusionary zoning permits a presumptive minimum density of 12 units per acre and a presumptive maximum affordable housing set-aside of 20 percent of the total number of units in the development and the zoning provides for at least 10 percent of the affordable units to be affordable to households earning 30 percent or less of the area median income for the COAH region;
- ii. In Urban Centers and Workforce Housing Census Tracts, inclusionary zoning permits a presumptive minimum of 25 units per acre and a presumptive maximum affordable housing set-aside of 15 percent of the total number of units in a mixed-income development; or
- iii. (No change in text.)
- 7. Inclusionary zoning ordinances shall contain a development size threshold below which affordable units shall not be

required. Such a threshold shall be based on whether or not the density and set-aside required by the zoning ordinance could result in the provision of at least one affordable unit on-site, for example, the individual parcel would accommodate fewer than five dwelling units where the zoning requires a 20 percent set-aside. Sites falling below such threshold shall not be required to provide affordable housing or make a payment in lieu pursuant to (c) below. In considering "d" variances pursuant to N.J.S.A. 40:55D-70, municipalities may evaluate whether any increased number of residential units permitted on a site as a result of the grant of said variance could reasonably result in an opportunity to include affordable housing. However, the ordinance may require the payment of a development fee pursuant to N.J.A.C. 5:97-8.3;

- 8. Zoning in non-residential districts *[may permit affordable housing to be provided on or off site and may include a payment in lieu of providing affordable housing option pursuant to the standards set forth in (c) below. In such instances, the zoning shall follow the mixed use standards set forth in (b)9 below. Where affordable housing is not required in a non-residential district, the ordinance may require the payment of a development fee pursuant to N.J.A.C. 5:97-8.3]* *shall provide an increase in permitted floor area with proportional increases in allowable height and/or impervious coverage to offset the cost of any affordable housing requirements*;
- 9. Inclusionary zoning in mixed use districts shall incorporate residential density increases and affordable set asides based on the standards set forth in (b)3 through 5 above and/or shall provide an increase in permitted floor area with proportional increases in allowable height and/or impervious coverage to offset the cost of any on-site affordable housing requirements. Mixed use zoning ordinances shall *[establish options that]* permit both *[residential density increases and non-residential floor area increases. Non-residential floor area increase options and]* residential density increase *[options shall be clearly delineated in the zoning ordinance]* *and non-residential floor area increase options at the developer's discretion to be exercised at the beginning of the development approval process*; and
- 10. The vested rights pursuant to N.J.S.A. 40:55D-49 and 50 exist for developments which received preliminary or final approval between December 20, 2004 and June 2, 2008 under the prior N.J.A.C. 5:94 and 5:95.
- (c) Inclusionary zoning ordinances shall require developers to construct the required affordable units on site; alternatively, the ordinance may allow the developer the option of providing the units elsewhere in the municipality or making a payment in lieu of providing the whole or fractional affordable units required by the zoning, subject to the following:
- 1. Payments in lieu of constructing affordable units may represent fractional affordable units. The affordable housing requirement shall not be rounded.
- 2. The zoning ordinance may include specific criteria to be met for a development to be eligible to provide a payment in lieu. Examples of such criteria include, but are not limited to, minimum development size thresholds or environmental or site configuration concerns. Once criteria are established by ordinance, exercising the option shall be at the developer's discretion.
- 3. The amount of payments in lieu of constructing affordable units on site shall be established by ordinance and based on the cost of constructing new residential units pursuant to this section. The cost of constructing new residential units includes the sum of development hard costs, related soft costs and developer's fees pursuant to the cost containment provisions of N.J.A.C. 5:43-2.4(a)1 through 6 and land costs equal to 25 percent of the first quartile of new construction costs as reported to the Homeowner Warranty Program. These costs are totaled by region to reflect average construction costs. Offsetting proceeds anticipated from the sale of the unit or the capitalization of rental income may be updated and published by the Council periodically. The initial determination of these costs is as follows and may be revised periodically by the Council:

| COAH Region | 1st Quartile | Land Costs | Construction Costs | Total Cost | Affordable Price | Subsidy Required/ Payment in Lieu Amount |
|----------------|-----------------|---------------|-----------------------|------------|---------------------|--|
| 1 | \$ 330,000 | \$ 82,500 | \$ 165,798 | \$ 267,332 | \$ 87,065 | \$ 180,267 |
| 2 | \$ 255,000 | \$ 63,750 | \$ 163,206 | \$ 244,491 | \$ 95,808 | \$ 148,683 |
| 3 | \$ 381,966 | \$ 95,492 | \$ 141,258 | \$ 256,824 | \$ 110,921 | \$ 145,903 |
| 4 | \$ 343,725 | \$ 85,931 | \$ 140,697 | \$ 245,937 | \$ 93,710 | \$ 152,227 |
| 5 | \$ 257,790 | \$ 64,448 | \$ 152,835 | \$ 237,471 | \$ 79,784 | \$ 156,089 |
| 6 | \$ 264,690 | \$ 66,173 | \$ 167,262 | \$ 251,163 | \$ 68,304 | \$ 182,859 |

4. (No change in text.)

(d) (No change.)

(f) (No change.)

(g) Inclusionary zoning ordinances shall require that affordable units utilize the same heating source as market-rate units within the inclusionary development and have access to all community amenities available to market-rate units and subsidized in whole by association fees.

(h)-(k) (No change.)

5:97-6.5 Status of sites addressing the 1987-1999 obligation

(a)-(b) (No change.)

^{5.} Payments in lieu of constructing affordable housing shall not be permitted where affordable housing is not required. Zoning that does not require an affordable housing set-aside or permit a corresponding payment in lieu may be subject to a development fee ordinance pursuant to N.J.A.C. 5:97-8.3.

⁽e) The Council encourages the design of inclusionary and mixed-use developments providing affordable housing to be consistent with the general policies and implementation mechanisms regarding design in the State Development and Redevelopment Plan.

- (c) A zoned but unbuilt site that was included in a housing element and fair share plan that received prior round substantive certification or a judgment of compliance shall be evaluated by the Council at the time the [page=6063] municipality petitions for the third round to determine if the site continues to present a realistic opportunity for the construction of affordable housing. The municipality shall submit all decisions on applications for development on any unbuilt sites included in the prior round certified fair share plan. In evaluating an unbuilt site, the Council shall consider whether the site meets all of the following criteria:
- 1. The site is a suitable site pursuant to N.J.A.C. 5:97-3.13; and
- 2. Market conditions create a realistic opportunity for the affordable housing to be constructed.
- (d)-(e) (No change.)
- 5:97-6.6 Redevelopment
- (a) New Jersey's Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., may be used to create affordable housing units.
- (b) The following provisions shall apply to affordable housing units proposed in a redevelopment area *or rehabilitation area*:
- 1. All sites shall meet the site suitability criteria set forth in N.J.A.C. 5:97-3.13. If the redevelopment *or rehabilitation* area contains brownfields, the Council may require the municipality and the redeveloper to participate in OSG's Brownfield Redevelopment Interagency Team (BRIT) process.
- 2. The municipality shall designate the site as an area in need of redevelopment *or rehabilitation*.
- 3. The municipality shall adopt a redevelopment plan.
- 4. The redevelopment agreement shall comply with N.J.A.C. 5:97-6.4(b) through (h).
- 5. The municipality shall issue a request for proposals for a designated redeveloper*, if applicable*.
- (c) (No change.)
- (d) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted with the municipality's petition for substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4:
- 1. (No change.)
- 2. Demonstration that the resolution designating the area in need of redevelopment *or rehabilitation* has been approved by DCA*, if required by the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., at the time the area was so designated*;
- 3. A redevelopment plan adopted by the governing body which includes the requirements for affordable housing;
- 4. A description of the site, including its location, acreage, and existing and intended use; and

- 5. An anticipated timeline and development process expected for the site.
- (e) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by the municipality prior to the grant of substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4:
- 1. A copy of the final Request for Proposals, *if applicable,* which includes the requirements for affordable housing;
- 2. A demonstration that the municipality or redeveloper either has site control or a plan in place for obtaining site control, in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40B:12A-1 et seq.;
- 3. An executed redevelopment agreement that results in the creation of affordable housing units and which shall include the following:
- i.-iii. (No change.)
- 4. (No change.)
- (f) The following documentation shall be submitted prior to marketing the completed units:
- 1. (No change.)
- 2. An affirmative marketing plan in accordance with UHAC, except that low- and moderate-income households that have been displaced in areas designated in need of redevelopment *or areas in need of rehabilitation* pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., may be provided a preference over other applicants for referral to the newly created restricted units within the redevelopment area, provided that households otherwise meet all certification requirements set forth at N.J.A.C. 5:80-26.6; and
- 3. (No change.)
- 5:97-6.7 Municipally sponsored and 100 percent affordable developments
- (a)-(c) (No change.)
- (d) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted with the municipality's petition for substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4:
- 1. (No change.)
- 2. A demonstration that the municipality or developer/sponsor has site control or has the ability to control the site(s). Control may be in the form of outright ownership, a contract to purchase or an option on the property;
- 3.-4. (No change.)
- 5. A request for proposals (RFP) or executed agreement, including a schedule for the construction of the units, with the developer or sponsor; or documentation that the development has received preliminary or final approvals; and
- 6. Detailed information demonstrating that the municipality or developer has adequate funding capabilities. The documentation shall include:

- i. A pro forma statement for the project; and
- ii. Evidence of adequate and stable funding. If State and/or Federal funds will be used, documentation shall be provided indicating the available funding and any pending applications. In the case where an application for outside funding is pending, a stable alternative source such as municipal bonding shall be provided in the event the funding request is not approved. As outside funds become available, the municipality may reduce its reliance on municipal sources.
- (e) (No change.)
- 5:97-6.9 Market to affordable program
- (a) (No change.)
- (b) The following provisions shall apply to market to affordable programs:
- 1.-3. (No change.)
- 4. No more than 10 for-sale and 10 rental units, or an amount equal to a combined total of 10 percent of the fair share obligation, whichever is greater, may be used to address the fair share obligation, unless the municipality has demonstrated a successful history of a market to affordable program.
- (c)-(e) (No change.)
- 5:97-6.10 Supportive and special needs housing
- (a) Supportive and special needs housing includes, but is not limited to: residential health care facilities as licensed and/or regulated by DCA or the New Jersey Department of Health and Senior Services if the facility is located with, and operated by, a licensed health care facility; group homes for people with developmental disabilities and mental illness as licensed and/or regulated by the New Jersey Department of Human Services; permanent supportive housing; and supportive shared living housing. Long term health care facilities including nursing homes, and Class A, B, C, D, and E boarding homes do not qualify as supportive and special needs housing.
- (b) The following provisions shall apply to group homes, residential health care facilities, and supportive shared living housing:
- 1. The unit of credit shall be the bedroom.
- 2. Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to N.J.A.C. 5:97-3.8.
- 3. Occupancy shall not be restricted to youth under 18 years of age.
- 4. All sites shall meet the site suitability criteria set forth in N.J.A.C. 5:97-3.13.
- 5. The municipality or developer/sponsor shall have site control or the ability to control the site(s).
- (c) The following provisions shall apply to permanent supportive housing:
- 1. The unit of credit shall be the unit.

- 2. Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to N.J.A.C. 5:97-3.8.
- 3. Units shall not be restricted to youth under 18 years of age.

[page=6064] 4. All sites shall meet the site suitability criteria set forth in N.J.A.C. 5:97-3.13.

- 5. The municipality or developer/sponsor shall have site control or the ability to control the site(s).
- (d) The bedrooms and/or units pursuant to (b) and (c) above shall comply with N.J.A.C. 5:97-9 and UHAC with the following exceptions:
- 1. Affirmative marketing (N.J.A.C. 5:80-26.15); however, group homes, residential health care facilities, permanent supportive housing and supportive shared living housing shall be affirmatively marketed to individuals with special needs in accordance with a plan approved by the Council's Executive Director;
- 2. (No change.)
- 3. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, group homes, residential health care facilities, supportive shared living housing and permanent supportive housing shall have the appropriate controls on affordability in accordance with N.J.A.C. 5:97-9.
- (e) The following minimum documentation for supportive and special needs housing, as detailed further in a checklist provided by the Council, shall be submitted by the municipality with its petition for substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4:
- 1. Information regarding the development on forms provided by the Council;
- 2.-3. (No change.)
- 4. A demonstration that the municipality or provider has site control or has the ability to control the site(s); control may be in the form of outright ownership, a contract to purchase or an option on the property;
- 5. An executed agreement, including a schedule for the construction of the development, with the provider, sponsor or developer;
- 6. A pro forma for the development;
- 7.-8. (No change.)
- (f) The following documentation shall be submitted prior to marketing the completed units or facility:
- 1. An affirmative marketing plan in accordance with (d)1 above; and
- 2. (No change.)
- 5:97-6.11 Assisted living residence

- (a) (No change.)
- (b) The following provisions shall apply to assisted living residences:
- 1.-3. (No change.)

Recodify existing 5.-7 as 4.-6. (No change in text.)

- (c) The units shall comply with N.J.A.C. 5:97-9 and UHAC with the following exceptions:
- 1. Affirmative marketing (N.J.A.C. 5:80-26.15) provided that the units are restricted to recipients of Medicaid waivers;
- 2.-4. (No change.)
- (d) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by the municipality with its petition for substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4:
- 1.-2. (No change.)
- 3. A demonstration that the municipality or provider has site control or has the ability to control the site(s); control shall be in the form of outright ownership, a contract to purchase or an option on the property;
- 4.-8. (No change.)
- (e) The documentation in (e)1 through 3 below shall be submitted prior to marketing the completed units or facility. In place of (e)2 and 3 below, an executed Memorandum of Understanding with the Agency may be submitted.
- 1. A draft or adopted operating manual that includes a description of the program procedures and administration in accordance with UHAC;
- 2. An affirmative marketing plan in accordance with UHAC if the units are not restricted to recipients of Medicaid waivers; and
- 3. Designation of an experienced administrative agent, including a statement of his or her qualifications, in accordance with N.J.A.C. 5:96-18.
- 5:97-6.13 Affordable housing partnership program
- (a) An affordable housing partnership is a voluntary agreement by which *[a municipality may]* *two or more municipalities* cooperate *[with other municipalities, planning and redevelopment authorities, non-profit organizations and/or regional planning commissions (such as the Fort Monmouth Economic Revitalization Authority, the New Jersey Meadowlands Commission and the Casino Reinvestment Development Authority)]* to build low- and moderate-income housing units.
- (b) The following provisions shall apply to affordable housing partnership programs:
- 1. *[All]* *The* municipalities *[and their partner agency]* shall be located within the same housing region*[, and within any statutorily defined jurisdictional boundaries]*.

- 2. (No change.)
- 3. The municipalities *[and/or partner agency]* shall*[, by formal agreement,]* set forth the number of credits each municipality will be allotted. No credit shall be given to more than one municipality for the same unit.
- 4. Each municipality *[and/or partner agency]* shall contribute resources, including, but not limited to, funding, sewer, water, and land.
- *[5. No municipality may permit more than 50 percent of its affordable housing obligation to be constructed in another municipality.]*
- *5. Units constructed in another municipality shall fall within the maximum number of units permitted to be provided through an RCA, consistent with the provisions of N.J.A.C. 5:97-3.*
- (c) (No change.)
- (d) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by each municipality, as applicable, with its petition for substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4:
- 1. (No change.)
- 2. A draft or executed agreement between all municipalities *[and/or partner agency]*, which in addition to the requirements of (b)3 and 4 above, includes a schedule for the creation of the units and designation of the *[municipal representative or partner agency representative]* *municipality* responsible for monitoring the partnership program; and
- 3. (No change.)
- 5:97-6.14 Extension of expiring controls
- (a) (No change.)
- (b) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by each municipality with its petition for substantive certification:
- 1. (No change.)
- 2. Written commitment from the owner to extend controls, or evidence that the controls have been extended in accordance with UHAC; and
- 3. Proposed or filed deed restriction for the extended control period.
- (c) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by the municipality prior to the grant of substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4:
- 1. A pro-forma for any proposed acquisition and/or rehabilitation costs;
- 2. Documentation demonstrating the source(s) of funding;

40 N.J.R. 5965(a)

3. A municipal resolution appropriating funds or a resolution of intent to bond in the event of a shortfall of funds;

Recodify existing 1.-3. as 4.-6. (No change in text.)

SUBCHAPTER 8. AFFORDABLE HOUSING TRUST FUNDS

5:97-8.1 Purpose

- (a) (No change.)
- (b) Affordable housing trust funds may contain mandatory development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing, funds in a barrier free escrow, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines and application fees, and any other funds collected by the municipality in [page=6065] connection with its affordable housing programs, as permitted by the Council.
- (c)-(e) (No change.)
- 5:97-8.3 Development fee ordinances
- (a)-(d) (No change.)
- (e) The following are eligible exactions, ineligible exactions and exemptions:
- 1.-2. (No change.)
- 3. *[Developments]* *Residential developments* that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or construction permit shall be synonymous with preliminary or final site plan approval for this purpose.
- 4.-5. (No change.)
- (f) Municipalities may collect 100 percent of the development fee on any specific development at the issuance of the certificate of occupancy. As an alternative, municipalities may collect up to 50 percent of the development fee at the time of issuance of the building permit. The remaining portion may be collected at the issuance of the certificate of occupancy. Regardless of the time of collection, the fee shall be based on the percentage that applies on the date that *residential* building permits are issued.
- (g)-(i) (No change.)
- 5:97-8.7 Use of funds for housing activity
- (a) A municipality may use affordable housing trust funds for any housing activity as itemized in the spending plan and approved by the Council. Such activities include, but are not limited to:
- 1.-8. (No change.)
- 9. Green building strategies designed to be cost-saving for low- and moderate-income households, either for new

construction that is not funded by other sources, or as part of necessary maintenance or repair of existing units, in accordance with accepted national or state standards or such guidance as may be provided by DCA or the New Jersey Housing and Mortgage Finance Agency;

10. (No change.)

11. To defray the costs of structured parking; in the case of inclusionary developments, eligible costs shall be pro-rated based on the proportion of affordable housing units included in the development;

Recodify existing 11.-12. as 12.-13. (No change in text.)

(b)-(c) (No change.)

5:97-8.8 Use of funds for affordability assistance

- (a) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipality's Fair Share Plan. One-third of the affordability assistance portion shall be used to provide affordability assistance to very low income households.
- 1.-2. (No change.)
- (b)-(c) (No change.)
- 5:97-8.9 Use of funds for administrative expenses
- (a) No more than 20 percent of all development fee revenue, exclusive of the fees used to fund an RCA, shall be expended on administration.
- (b)-(c) (No change.)
- 5:97-8.10 Spending plans
- (a) A plan to spend affordable housing trust funds shall include the following:
- 1. (No change.)
- 2. A projection of revenues anticipated from other sources, including payments in lieu of constructing affordable units on sites zoned for affordable housing, funds from the sale of units with extinguished controls, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, and interest earned;
- 3.-10. (No change.)
- (b) (No change.)
- 5:97-10.2 Unnecessary cost generating requirements
- (a) In the development of municipal ordinances, a municipality shall use the Residential Site Improvement Standards, N.J.A.C. 5:21, where applicable. N.J.A.C. 5:21 establishes standards for all site improvements associated with residential development and deviations from those standards are to be done in accordance with N.J.A.C. 5:21-3. A

municipality that wishes to impose more stringent standards shall bear the burden of justifying the need for such standards. To ensure that its municipal ordinances are not detrimental to the production of affordable housing or the financial feasibility of an affordable housing development, a municipality shall give special attention to:

1.-4. (No change.)

(b)-(d) (No change.)

5:97-10.4 Special studies/escrow accounts

(a) It is common for municipalities to require developers of affordable housing developments to conduct special studies related to the fiscal, traffic and environmental impacts of proposed inclusionary developments. These studies are then reviewed by municipal professionals who are paid from escrow accounts funded by the developer of affordable housing developments as a requirement of the municipal review of the development application pursuant to N.J.S.A. 40:55D-1 et seq. The Council has determined that these studies shall not be used to alter the permitted density, unless as part of a use variance application pursuant to N.J.S.A. 40:55D-70d(4) or (5). Such studies may be used to foster proper design and to determine pro-rata off-tract improvement costs, but may not be excessive. In addition, special studies related to the fiscal impact of affordable housing developments that are included in a Housing Element and Fair Share Plan shall not be conducted, unless as part of a use variance application pursuant to N.J.S.A. 40:55D-70d(4) or (5). The Council has also determined that it is unnecessary for developers of affordable housing developments to pay for both the preparation of such studies and to pay into an escrow account for subsequent municipal review. Therefore, municipalities that receive substantive certification shall offer developers of affordable housing developments the option of preparing traffic and environmental impact studies or choosing a consultant from a list of at least six professionals prepared by the municipality to prepare the studies. If the developer chooses a consultant from the municipally prepared list, the developer and municipality shall rely on the consultant's recommendations and no other reports shall be prepared.

(b) (No change.)

5:97-10.5 Developer relief

(a)-(c) (No change.)

(d) Developers of affordable housing sites in conformance with a Housing Element and Fair Share Plan may request the Council to assist in expeditious processing or review provided the site meets the site suitability standards pursuant to N.J.A.C. 5:97-3.13. The Council shall act as an advocate with other State agencies, including DEP and DOT, in assisting the municipality and developer to move the affordable housing development forward expeditiously.

(e) (No change.)

[page=6066] APPENDIX A

COUNCIL ON AFFORDABLE HOUSING (COAH)

GROWTH SHARE RATIO METHODOLOGY

CONTENTS

INTRODUCTION

LOW- AND MODERATE-INCOME HOUSING NEED (1999-2018)

SECONDARY SOURCES OF SUPPLY

ADJUSTED PROJECTED NEED

HOUSING UNIT GROWTH (2004-2018)

EMPLOYMENT GROWTH (2004-2018)

STATEWIDE GROWTH SHARE RATIOS

MUNICIPAL-LEVEL PROJECTIONS

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INTRODUCTION

In COAH's Third Round Rules, municipalities incur affordable housing obligations when local housing units and jobs increase. The extent to which they do--each municipality's "growth share" for housing unit and employment growth--are determined by two Statewide Growth Share Ratios, developed using the methodology described in detail in this Appendix. <1>

The numerator in both of these ratios is New Jersey's projected affordable housing need. This total is calculated based on an estimate of future housing need as a percentage of future household growth, as was done in the previously adopted Third Round Substantive Rules. We use the most recent and best data available and estimate that future need will grow as it has in the past. This assumes that in the period for which we are projecting need (between 1999 and 2018), low- and moderate-income households (those with incomes below 80 percent of their regional medians) represent the same percentage of all households as they do in 2000 (according to the 2000 U.S. Census 5-Percent Public Use Microdata Sample (PUMS)). Low- and moderate-income owners with significant assets--those who have paid off

their mortgages and spend less than 38 percent of their income on other housing costs--are removed from this total, and low- and moderate-income residents of noninstitutional group quarters are added to this total, to reach a "Total Projected Need (1999-2018)" of 131,297 households.

Some of these households are accommodated by supply responses including "Secondary Sources of Supply." These adjustments to the composition and value of the housing stock include filtering and residential conversions (which can decrease the demand for affordable housing) and demolitions (which can increase the demand for affordable housing). In all, these Secondary Sources of Supply are expected to reduce New Jersey's projected affordable housing need by 15,631 units, or from 131,297 to 115,666.

This numerator (115,666) is then divided by two denominators--projected housing unit growth from 2004 to 2018 and projected employment growth from 2004 to 2018--to create two Growth Share Ratios, one for housing and one for employment. Projected housing unit growth incorporates the expected increase in units over this time period as well as the predicted number of replacement units required. Also, units required to deliver prior round obligations are subtracted from this total <2>, resulting in a Statewide figure for housing unit growth of 314,069. Projected job growth is simply based on the difference between Econsult's estimates for 2004 and 2018 employment, or 791,465.

Assigning roughly 60 percent of projected affordable housing need to projected housing unit growth from 2004 to 2018, and the remainder (43 percent) to projected net employment growth from 2004 to 2018, results in the following growth share ratios:

New Jersey

57 percent/43 One Affordable Unit among Five Units Produced

percent Split One Affordable Unit for 16 Jobs Created

This document has been updated slightly since it was first released in December 2007. Over the last few months, new data has become available that allowed Econsult to update their housing unit and employment projections. These new figures, and the Growth Share Ratios they generated, are documented in this version. While the Growth Share Ratios did not change, the portion of the projected affordable housing need accommodated by new housing units and by new jobs did change slightly.

LOW- AND MODERATE-INCOME HOUSING NEED (1999-2018)

The first step in understanding low- and moderate-income housing need in New Jersey is identifying the share of households with incomes below 80 percent of their regional medians--those households qualifying for housing assistance through federal and state programs. This methodology then assumes that the same portion of New Jersey's new households will be below 80 percent of their regional median incomes as were below 80 percent of their regional median according to the 2000 U.S. Census 5-Percent Public Use Microdata Sample (PUMS), released in August 2003. (This database is comprised of a sample of State housing units and includes characteristics about those units and the households that reside in them. It is especially valuable for identifying low- and moderate-income households since it reports household size as well as income level; both are necessary to compare incomes to COAH-published figures for low- and moderate-income category limits.)

Econsult projections predict that New Jersey will add 377,190 households between 1999 and 2018. An analysis of the

PUMS data suggests that 37.7 percent of these households, or 142,201, will have low- or moderate-incomes.

[page=6067] This figure is refined to isolate low- and moderate-income households in need of affordable housing. Low- and moderate-income owners who have paid off their mortgages and currently spend less than 38 percent of their household income on housing costs are removed from this total. Low- and moderate-income residents of noninstitutional group quarters, as well as an estimate of vacant units, are added to this total. These calculations result in a Total Projected Need (1999-2018) of 131,071. (As described in subsequent sections, Secondary Sources of Supply reduce this need number.)

As described in detail in chapter Appendix F, Econsult bases its housing unit projections on data from the New Jersey Labor and Workforce Development (NJLWD). While other projections exist, most notably from the Metropolitan Planning Organization (MPO), Econsult uses NJLWD's population and employment projections as the county control totals because these forecasts are based on state of the art methodology consistently applied across all State of New Jersey counties. Econsult also relies on data from the U.S. Census Bureau's 1990 and 2000 Census and 2002 American Community Survey, and on land capacity estimates provided by Rutgers' National Center for Neighborhood & Brownfields Redevelopment (NCNBR). The Rutgers team identifies New Jersey's available land--the amount of undeveloped and unconstrained land available for future development on a statewide basis as of 2002--using spatial files from the Office of Smart Growth (OSG), Department of Environmental Protection (DEP), and the New Jersey Department of Agriculture. (This is described separately in Appendix F.) This estimate of vacant land is then converted into estimates of residential and non-residential development capacity at the municipal level.

Using this information, Econsult constructs housing unit projections for municipalities based on county-wide projections, communities' historical growth rates, physical growth capacities, and expected growth rates (a function of the relationship between local build-out levels and historical growth rates) in the State's 566 municipalities. This technique produces housing unit totals going backward to 1999 and going forward to 2018.

| Area | Population (1999) | Average Household | Households |
|------------|-------------------|-------------------|------------|
| | | Size (2000) | (1999) |
| | | | |
| New Jersey | 8,359,592 | 2.68 | 3,116,867 |

The number of households in 2018 is derived from Econsult's housing unit estimates for 1999 and 2018. In 1999, total household figure--3,116,867--was just over five percent lower than the total housing unit figure. This implies that roughly five percent of the State's housing units (3,294,671 in all) were vacant that year. We assume that this same vacancy rate will exist in 2018 as well, when the number of households will again be approximately five percent less than the number of housing units.

| Area | Housing Units | Vacancy Rate | Households (2018) |
|------------|---------------|--------------|-------------------|
| | (2018) | | |
| | | | |
| New Jersey | 3,693,378 | 5.4 percent | 3,494,057 |

Therefore, according to Econsult's projections, New Jersey is expected to add the following number of households between 1999 and 2018:

| COAH Region | | Households | | Household Change |
|-------------|------------------------|-----------------|-----------------|---------------------|
| 1 | Northeast Region | 1999 783,927 | 2018 818,694 | 1999-2018 34,767 |
| 2 | Northwest Region | 689,671 | 733,077 | 43,406 |
| 3 | West Central Region | 424,610 | 471,092 | 46,482 |
| 4 | East Central Region | 560,127 | 683,012 | 122,885 |
| 5 | Southwest Region | 440,239 | 494,539 | 54,300 |
| 6 | South-Southwest Region | 218,515 | 293,643 | 75,128 |
| Tota | ıl | 3,116,867 | 3,494,057 | 377,190 |

What portion of these households will have low or moderate incomes--incomes below 80 percent of their regional medians? To answer this question, we rely on the 2000 U.S. Census 5-Percent Public Use Microdata Sample (PUMS) and the COAH regions established in earlier rounds. (An analysis by the Center for Urban Policy Research (CUPR), a component of Rutgers University's Edward J. Bloustein School of Planning and Public Policy, and reported in the previously adopted Third Round Substantive Rules, justified retaining the COAH Regions used in earlier rounds. That research found the linkages between counties in the same region to be stronger than between counties in different regions. For one thing, at least two-thirds (and in some cases nearly all) workers not working at home commuted somewhere else within their region of residence (pages 60-61). Their work also found "significant social, economic, and income interrelationships" between counties within a given region (page 60). Additionally, these COAH Regions "comport with State Plan principles and land designations" (page 61).)

Each PUMS record includes a "PUMS Area" to describe the geographic location of that housing unit and household. To fit PUMS records to COAH regions, we group PUMS Areas in the following ways:

| COA | .H Region | PUMS Area | County |
|-----|-----------|------------------------------|--------|
| 1 | Northeast | 301, 302, 303, 304, 305, 306 | Bergen |

40 N.J.R. 5965(a)

| | | 400, 501, 502 | Passaic |
|---|-----------------|-----------------------------------|------------|
| | | 601, 602, 701, 702, 703 | Hudson |
| | | 1600 | Sussex |
| 2 | Northwest | 1301, 1302, 1401, 1402, 1403,1404 | Essex |
| | | 1501, 1502, 1503, 1504 | Morris |
| | | 1700 | Warren |
| | | 1800, 1901, 1902, 1903 | Union |
| 3 | West Central | 800 | Hunterdon |
| | | 901, 902, 903, 904, 905 | Middlesex |
| | | 1001, 1002 | Somerset |
| 4 | East Central | 1101, 1102, 1103, 1104, 1105 | Monmouth |
| | | 1201, 1202, 1203 | Ocean |
| | | 2301, 2302 | Mercer |
| 5 | Southwest | 2001, 2002, 2003 | Burlington |
| | | 2101, 2102, 2103, 2104 | Camden |
| | | 2201 | Gloucester |
| 6 | South-Southwest | 101, 102 | Atlantic |
| | | 200 | Cape May |
| | | 2400 | Cumberland |

PUMS Area 2202 is partially in Gloucester County (and COAH Region 5) and partially in Salem County (and COAH Region 6). Since county information is not available in the PUMS dataset, records in 2202 are assigned to regions and compared to regional median incomes using methods described in further detail below.

To determine what portion of New Jersey households have incomes below 80 percent of their regional median income, this methodology arrays all households by size and income, and uses the regional median income levels adopted by COAH on April 5, 2000, for households including one to eight persons (see table). (The regional median incomes for eight-person households were used for any household including more than eight people.)

| COAH Region | | Household Size | | | |
|-------------|--|--|-------------------------------------|-------------------------------------|-------------------------------------|
| | | 1 | 2 | 3 | 4 |
| 1 | Northeast | \$ 37,426 | \$ 42,772 | \$ 48,118 | \$ 53,465 |
| 2 | Northwest | \$ 39,536 | \$ 45,184 | \$ 50,832 | \$ 56,480 |
| 3 | West Central | \$ 45,248 | \$ 51,712 | \$ 58,176 | \$ 64,640 |
| 4 | East Central | \$ 36,123 | \$ 41,283 | \$ 46,444 | \$ 51,604 |
| 5 | Southwest | \$ 32,368 | \$ 36,992 | \$ 41,616 | \$ 46,240 |
| 6 | South-Southwest | \$ 27,978 | \$ 31,974 | \$ 35,971 | \$ 39,968 |
| | | | | | |
| | | | | | |
| CO | AH Region | Household Size | | | |
| CO | AH Region | Household Size | 6 | 7 | 8 |
| COA | AH Region Northeast | | 6 \$ 62,019 | 7 \$ 66,296 | 8 \$ 70,574 |
| | - | 5 | | • | |
| 1 | Northeast | 5 \$ 57,742 | \$ 62,019 | \$ 66,296 | \$ 70,574 |
| 1 2 | Northeast Northwest | 5 \$ 57,742 \$ 60,998 | \$ 62,019 \$ 65,517 | \$ 66,296 \$ 70,035 | \$ 70,574 \$ 74,554 |
| 1 2 3 | Northeast Northwest West Central | 5 \$ 57,742 \$ 60,998 \$ 69,811 | \$ 62,019 \$ 65,517 \$ 74,982 | \$ 66,296 \$ 70,035 \$ 80,154 | \$ 70,574 \$ 74,554 \$ 85,325 |

Since those records in PUMS Area 2202 could not be assigned to a COAH Region, income levels for these records are calculated twice. First, Region 5 income levels are used to identify a *low* number of low- and moderate-income households. Second, Region 6 income levels (below Region 5 levels) are used to identify a *high* number of low- and moderate-income households. To ensure that all low- and moderate-income households are included in this analysis, the table below shows *high* results.

| Steps | Records |
|---|--------------|
| | |
| 1. Households <80 percent of Regional Median | 62,421 |
| Income | |
| | |
| 2. All PUMS Records (Housing Units Only) | 165,513 |
| | |
| 3. Percent Housing Need Interim (Step 1 Step 2) | 37.7 percent |

[page=6069] According to these procedures, low- and moderate-income households represent 37.7 percent of all households in the State. If 37.7 percent of the households New Jersey is expected to add between 1999 and 2018 similarly qualify for affordable housing, Econsult's projections imply that 142,201 additional households will qualify for affordable housing over the nineteen year period.

| COAF | COAH Region | | |
|---------|------------------------|----------|--|
| 1 | Northeast Region | 13,107 | |
| | | | |
| 2 | Northwest Region | 16,364 | |
| | | | |
| 3 | West Central Region | 17,524 | |
| | | | |
| 4 | East Central Region | 46,328 | |
| | | | |
| 5 | Southwest Region | 20,471 | |
| | | | |
| 6 | South-Southwest Region | 28,323 | |
| Tr. 4.1 | | 1.42.201 | |
| Total | | 142,201 | |

To refine this number and further identify households in need of affordable housing, this methodology then removes qualifying households likely to have significant assets--owner households with incomes below 80 percent of their regional median income whose mortgages were fully paid off and who spent less than 38 percent of their income on housing costs, as reported in the PUMS file. (This replicates the methodology used to develop the previously adopted Third Round Substantive Rules.) According to the PUMS file, these owners represent 17 percent of all households statewide and the following percentages in each region below 80 percent of their regional median income in the state:

| COAH Region | | Percent Paid Down |
|-------------|------------------------|-------------------|
| 1 | Northeast Region | 12 percent |
| 2 | Northwest Region | 13 percent |
| 3 | West Central Region | 20 percent |
| 4 | East Central Region | 25 percent |
| 5 | Southwest Region | 20 percent |
| 6 | South-Southwest Region | 20 percent |
| Total | | 17 percent |

We assume that owners without mortgages and housing costs below 38 percent represent the same portion of "Initial Projected Need" households. These households are then subtracted from the "Initial Projected Need" to get a "Projected Need Subtotal."

| COAH Region | | Projected Need | Paid-Down | Subtotal |
|-------------|------------------------|----------------|-----------|----------|
| 1 | Northeast Region | 13,107 | -1,537 | 11,570 |
| 2 | Northwest Region | 16,364 | -2,119 | 14,245 |
| 3 | West Central Region | 17,524 | -3,451 | 14,073 |
| 4 | East Central Region | 46,328 | -11,699 | 34,628 |
| 5 | Southwest Region | 20,471 | -4,135 | 16,336 |
| 6 | South-Southwest Region | 28,323 | -5,681 | 22,642 |
| Total | | 142,201 | -24,350 | 117,85 |

While owners with significant assets reduce the overall need, demand from low- and moderate-income households in group quarters increases the overall need. The 1990 and 2000 Censuses specify the populations in group quarters,

making it possible to identify individuals living in correctional facilities, nursing homes, mental hospitals, juvenile facilities, college dormitories, military quarters, and other noninstitutional group quarters. Residents living in "other" noninstitutional group quarters are included in this methodology. (The 1990 Census further highlights individuals living in emergency shelters or on the street; the 2000 Census considers these individuals to be living in "other" noninstitutional group quarters. To make the two years' numbers compatible, individuals living in emergency shelters or on the street are added to those in "other" group quarters in 1990.)

Between 1990 and 2000, the number of individuals in "other" noninstitutional group quarters increased by 11,297. We assume that every two residents contribute to the demand for one additional unit of housing. Therefore, the 11,297 additional residents in these group quarters represent the demand for 5,649 additional housing units. If the number of residents in these group quarters increases at the same rate in the future, the overall demand for housing by residents in "other" noninsitutional group quarters is expected to be 11,015 (or 5,649 x 1.95) over the 19-year period from 1999 to 2018.

Since income data is not available for residents of group quarters, we assume that 80 percent have low or moderate incomes. (This assumption was also used by CUPR (see footnote 14 on page 160 of Appendix A of the previously adopted Third Round Substantive Rules).) Therefore, the additional demand for affordable housing units by individuals in "other" noninstitutional group quarters between 1999 and 2018 is expected to be 8,812 Statewide.

| COA | AH Region | Population | in | Change | Additional | Additional | Additional |
|-----|--------------|--------------|-------|-----------|------------|------------|------------|
| | | "Other" | | | Demand | Demand | Affordable |
| | | Noninstituti | ional | | (1990-200 | (1999- | Housing |
| | | Group Quai | rters | | 2000) | (2018) | Demand |
| | | | | | | | (1999- |
| | | | | | | | 2018) |
| | | 1990 | 2000 | 1990-2000 | | | |
| 1 | Northeast | | | | | | |
| | Region | 5,528 | 9,059 | 3,531 | 1,766 | 3,443 | 2,754 |
| | | | | | | | |
| 2 | Northwest | | | | | | |
| | Region | 8,355 | 7,437 | -918 | -459 | -895 | -716 |
| | | | | | | | |
| 3 | West Central | | | | | | |
| | Region | 1,950 | 5,236 | 3,286 | 1,643 | 3,204 | 2,563 |
| | | | | | | | |
| 4 | East Central | | | | | | |
| | Region | 4,272 | 5,080 | 808 | 404 | 788 | 630 |
| | | | | | | | |
| 5 | Southwest | | | | | | |
| | Region | 2,713 | 4,769 | 2,056 | 1,028 | 2,005 | 1,604 |
| | | | | | | | |

6 South-

| Southwest | | | | | | |
|-----------|--------|--------|--------|-------|--------|-------|
| Region | 2,024 | 4,558 | 2,534 | 1,267 | 2,471 | 1,977 |
| Total | 24,842 | 36,139 | 11,297 | 5,649 | 11,015 | 8,812 |

Vacancies in the housing stock available to low- and moderate-income households also increase the need. This vacancy rate (more limited than that used to transform housing unit numbers into household totals) is derived by taking the number of non-seasonal vacant units as a percentage of all housing units in 2000 (according to the Census). These rates (roughly four percent Statewide) added 4,365 units to the subtotal numbers.

| COAI | H Region | Vacancy Rate | Vacant |
|-------|------------------------|---------------------|--------|
| | | (excluding Seasonal | Units |
| | | Properties) | |
| 1 | Northeast Region | 2.9 percent | 339 |
| 2 | Northwest Region | 4.0 percent | 565 |
| 3 | West Central Region | 2.4 percent | 334 |
| 4 | East Central Region | 4.5 percent | 1,554 |
| 5 | Southwest Region | 5.2 percent | 842 |
| 6 | South-Southwest Region | 5.9 percent | 1,334 |
| Total | | 3.9 percent | 4,635 |

Together, these steps result in a "Total Projected Need" number of 131,297 for the state as a whole.

1

Northeast

| Projected | | Vacancy | | |
|------------|---------------------------------|---|--|---|
| Need (37.7 | | Rate | Additional | Total |
| percent of | Paid-Down | (excluding | Demand | Projected |
| Household | | Seasonal | from Group | Need |
| Change) | | Properties) | Quarters | (1999-2018) |
| | Need (37.7 percent of Household | Need (37.7 percent of Paid-Down Household | Need (37.7 Rate percent of Paid-Down (excluding Household Seasonal | Need (37.7 Rate Additional percent of Paid-Down (excluding Demand Household Seasonal from Group |

| | Region | 13,107 | -1,537 | 339 | 2,754 | 14,663 |
|------|------------------------|---------|---------|-------|-------|---------|
| 2 | Northwest Region | 16,364 | -2,119 | 565 | -716 | 14,094 |
| 3 | West Central Region | 17,524 | -3,451 | 334 | 2,563 | 16,970 |
| 4 | East Central Region | 46,328 | -11,699 | 1,554 | 630 | 36,812 |
| 5 | Southwest Region | 20,471 | -4,135 | 842 | 1,604 | 18,782 |
| 6 | South- Southwest | | | | | |
| | Region | 28,323 | -5,681 | 1,334 | 1,977 | 25,953 |
| Tota | al | 142,201 | -24,350 | 4,635 | 8,812 | 131,297 |

SECONDARY SOURCES OF SUPPLY

Secondary Sources of Housing Supply refers to those housing market adjustments that change the composition and value of the housing stock. This methodology reviews three types of adjustments: filtering, residential conversions, and demolitions. <3>

"Filtering" is the process by which units decline in value and therefore become affordable to lower-income households. This process begins when higher end housing is built by private developers. When higher-income consumers move into these new units, the demand for their prior units declines, causing values or rents to drop; the units then become affordable to consumers at a lower income level. In this way, the construction of new, market-rate housing may reduce affordable housing needs by freeing up additional existing units for purchase or rent by moderate-income households. Filtering is most likely to take place in housing markets containing sound housing undergoing significant turnover and in close proximity to substantial new development.

[page=6071] According to this Econsult analysis (these methods are described in further detail in Appendix F), 47,306 units are expected to filter down to households of lower incomes between 1999 and 2018. Half (50 percent) of these filtered units (23,626 units) are located in suburban communities (as defined by the Rutgers University Center for Urban Policy Research). This suburban share of filtering is included in this analysis.

| COAF | I Region | Filtering (1999-2018) |
|-------|-----------------|-----------------------|
| 1 | Northeast | 5,254 |
| 2 | Northwest | 2,111 |
| 3 | West Central | 610 |
| 4 | East Central | 2,459 |
| 5 | Southwest | 7,428 |
| 6 | South-Southwest | 5,764 |
| Total | | 23,626 |

Next, a residential conversion is the creation of a new dwelling unit from an existing structure (either residential or non-residential). Residential conversions occur when renovations increase the number of units in existing structures. The U.S. Department of Housing and Urban Development (HUD) considers residential conversions to be a significant source of housing supply to low- and moderate-income families. This primarily occurs in markets where new housing construction is not meeting the demand for smaller units.

This methodology (replicating that resulting in the previously adopted Third Round Substantive Rules) defines residential conversions as the change in total units, accounting for new construction (as indicated by certificates of occupancy) and demolitions. According to the U.S. Census, the number of housing units increased by 234,965 in New Jersey between 1990 and 2000. Our analysis of municipal-level data from the New Jersey Construction Reporter finds that, during the same time period, 233,916 certificates of occupancy were issued. According to state-level data reported in the previously adopted Third Round Substantive Rules (Appendix A, page 86), 26,212 residential properties were demolished between 1990 and 1999. Subtracting certificates of occupancy and adding demolitions to the total change in housing units (234,965 - 233,916 + 26,212) results in a difference of 27,261 units; these units were likely added through residential conversions.

This methodology estimates that 19.5 percent of converted units (5,316 units) are priced for low- and moderate-income households (since 19.5 percent of New Jersey's housing stock was affordable to these households in 2000). <4>
Projecting these 10-year trends out 19 and a half years (from mid-1999 through 2018) suggests that 10,366 units will be created as a result of residential conversions throughout New Jersey.

| CO | AH Region | Residential Conversion |
|----|-----------|------------------------|
| | | (1999-2018) |
| 1 | Northeast | 1,163 |
| 2 | Northwest | 1,283 |

| 3 | West Central | 1,782 |
|-------|-----------------|--------|
| 4 | East Central | 3,144 |
| 5 | Southwest | 2,079 |
| 6 | South-Southwest | 915 |
| Total | | 10,366 |

Unlike filtering and residential conversions, demolitions, which occur as land values outpace housing utility and dilapidated building conditions reach hazardous levels, represent a source of additional *demand* (not supply). In other words, while filtering and residential conversions can create affordable units, demolitions eliminate affordable units. By removing housing from the existing stock, particularly that portion of the stock affordable and available to low-income households, demolitions increase the demand for those units that remain.

In order to estimate the number of demolitions likely to occur through 2018, this analysis collects demolition totals for all New Jersey municipalities from the New Jersey Construction Reporter for the years 1996 through 2006. On average, 4,829 properties were demolished annually during this time period.

| COAH Region | | Average Annual Number of |
|-------------|-----------------|--------------------------|
| | | Demolitions (1996-2006) |
| 1 | Northeast | 907 |
| | | |
| 2 | Northwest | 1,245 |
| | | |
| 3 | West Central | 315 |
| | | |
| 4 | East Central | 811 |
| | | |
| 5 | Southwest | 504 |
| | | 1.046 |
| 6 | South-Southwest | 1,046 |
| Total | | 4,829 |
| 1 Otal | | 4,027 |

[page=6072] These annual averages are multiplied by 14 to determine the total number of demolitions expected to occur between 2004 and 2018 (used to estimate the number of units required to replace the loss of depreciated units, a component of housing unit growth described in the next section) and by 19.5 to determine the total number of demolitions expected to occur between the middle of 1999 and the end of 2018 (used as a secondary source of supply in this section).

As with residential conversions, this methodology assumes that 19.5 percent of demolitions directly affect low- and moderate-income households by removing low-cost units from the housing stock.

| COA | AH Region | All | Demolitions affecting Low- and | |
|------|---------------------|-------------|----------------------------------|--|
| | | Demolitions | Moderate-Income Households (19.5 | |
| | | (1999-2018) | percent of All Demolitions) | |
| 1 | Northeast Region | 17,685 | 3,449 | |
| | | | | |
| 2 | Northwest Region | 24,279 | 4,734 | |
| | | | | |
| 3 | West Central Region | 6,146 | 1,198 | |
| 4 | East Central Region | 15,816 | 3,084 | |
| | | | | |
| 5 | Southwest Region | 9,835 | 1,918 | |
| | | | | |
| 6 | South-Southwest | | | |
| | Region | 20,397 | 3,977 | |
| | | | | |
| Tota | 1 | 94,158 | 18,361 | |

Together these methods result in the following number of affordable housing units provided by secondary sources of supply for the State as a whole:

| COAH Region | | | Residential | | | |
|-------------|--------------|-------------|-------------|-------------|-----------|--|
| | | Filtering | Conversions | Demolitions | Total of | |
| | (1999-2018) | (1999-2018) | Sources | (1999-2018) | Secondary | |
| 1 | Northeast | 5,254 | 1,163 | -3,449 | 2,969 | |
| 2 | Northwest | 2,111 | 1,283 | -4,734 | -1,340 | |
| 3 | West Central | 610 | 1,782 | -1,198 | 1,194 | |

| 4 | East Central | 2,459 | 3,144 | -3,084 | 2,519 |
|-------|-----------------|--------|--------|---------|--------|
| 5 | Southwest | 7,428 | 2,079 | -1,918 | 7,589 |
| 6 | South-Southwest | 5,764 | 915 | -3,977 | 2,701 |
| Total | | 23,626 | 10,366 | -18,361 | 15,631 |

ADJUSTED PROJECTED NEED

Ultimately, affordable housing need is the Total Projected Need (based on household growth) *minus* the Secondary Sources of Supply already responding to a portion of that need.

| COAL | H Region | Projected | Adjusted | |
|-------|------------------------|--------------|-------------|-------------|
| | | Affordable | Secondary | Projected |
| | | Housing Need | Sources | Need |
| | | (1999-2018) | (1999-2018) | (1999-2018) |
| 1 | Northeast Region | 14,663 | -2,969 | 11,694 |
| 2 | Northwest Region | 14,094 | 1,340 | 15,434 |
| 3 | West Central Region | 16,970 | -1,194 | 15,776 |
| 4 | East Central Region | 36,812 | -2,519 | 34,293 |
| 5 | Southwest Region | 18,782 | -7,589 | 11,193 |
| 6 | South-Southwest Region | 25,953 | -2,701 | 23,251 |
| Total | | 131,297 | -15,631 | 115,666 |

This figure, the "Adjusted Projected Need (1999-2018)," is the numerator in the growth share ratio and therefore determines how much affordable housing need will be distributed across residential development and job increases.

To check the robustness of this approach, we estimate affordable housing need using a second approach. This second approach is modeled on the Department of Housing and Urban Development's (HUD) technique for identifying households with housing problems. According to the HUD approach, "housing need" is comprised of low- and moderate-income households (those below 80 percent of median income) paying 30 percent or more [page=6073] of household income on owner costs or rent, and any household living in dilapidated housing or in overcrowded conditions. As in the Secondary Sources approach, we assume that these issues will affect the same portion of new New Jersey households as they do all New Jersey households in 2000 (according to the Comprehensive Housing Affordability Strategy (CHAS) Dataset (available at www.huduser.org/datasets/cp.html)). We also add to this total the additional demand stemming from individuals currently living in non-institutional group quarters. As expected (because the HUD approach incorporates both primary and secondary sources of supply), the need number reached using this approach is slightly lower than that using the Secondary Sources approach. However, both result in similar growth share ratios (described in further detail below). As a result, this helps validate the use of and conclusions reached using the Secondary Sources Approach.

HOUSING UNIT GROWTH (2004-2018)

In COAH's Third Round Rules, municipalities incur affordable housing obligations when local housing units and jobs increase. To quantify these increases, Econsult projects housing unit and employment growth from 2004 to 2018 for all municipalities and the State as a whole. Because housing prices and production vary over long periods of time, with rapid growth in some periods and slow growth in others, extending projections out to 2018 makes sense in order to reflect both strong and weak housing markets. Given New Jersey's very strong housing market in recent years, it is likely that that projections stopping in 2014 would disproportionately capture a relatively slow part of the housing cycle.

According to Econsult's projections (described in detail in Appendix F), New Jersey will add the following number of housing units between 2004 and 2018:

| COAI | H Region | Housing | Housing | Net Housing |
|-------|------------------------|------------|------------|-------------|
| | | Units 2004 | Units 2018 | Unit Change |
| | | | | (2004-2018) |
| 1 | Northeast Region | 821,701 | 864,193 | 42,492 |
| 2 | Northwest Region | 726,750 | 774,894 | 48,144 |
| 3 | West Central Region | 449,911 | 497,964 | 48,053 |
| 4 | East Central Region | 656,113 | 721,977 | 65,864 |
| 5 | Southwest Region | 478,002 | 522,752 | 44,750 |
| 6 | South-Southwest Region | 296,027 | 316,172 | 20,145 |
| Total | | 3,428,504 | 3,697,952 | 269,448 |

These figures show new construction but cannot capture the number of units built to replace those removed from the housing stock through demolition. The net removal of existing homes--through intentional demolition as well as due to disasters such as storms or fires--represents a "crucial component of overall housing demand." <5> This component is the number of housing units required to replace units lost, over and above the new units required to accommodate household growth.

Existing techniques for quantifying the number of net removals rely on Census estimates and direct measures of net removals, construction data, and housing counts from the decennial census. The Census estimates a roughly 0.3 percent net removal rate. Our net removal rate is based on actual demolition trends and the existing housing stock in New Jersey. On average, 4,829 units were demolished annually between 1996 and 2006 Statewide. This figure represents 0.15 percent of New Jersey's total housing units (3,310,275 in 2000, according to the Census). This net removal rate (0.15 percent) is similar to but below the national rate, a result not unanticipated given the higher-than-average property values in New Jersey.

To account for the replacement of depreciated units, this methodology adds a figure comparable to the total number of demolitions (projected for the period from 2004 to 2018 by multiplying the average annual number of properties demolished between 1996 and 2006 by 14) to the Net Housing Unit Change to arrive at an overall figure for projected housing unit growth. This calculation results in an estimate of 67,601 replacement units between 2004 and 2018.

| COA | H Region | Replacement Units (2004-2018) |
|------|------------------------|-------------------------------|
| 1 | Northeast Region | 12,697 |
| 2 | Northwest Region | 17,431 |
| 3 | West Central Region | 4,413 |
| 4 | East Central Region | 11,355 |
| 5 | Southwest Region | 7,061 |
| 6 | South-Southwest Region | 14,644 |
| Tota | I | 67,601 |

As in the previously adopted Third Round Substantive Rules, it is further assumed that the delivery of the Remaining Prior Round Obligation will reduce the housing supply able to support the current round's affordable housing requirement. An analysis by COAH staff determined that 22,980 units are necessary to deliver prior round obligations.

| COAH Region | | Units Required to Deliver Prior Round |
|-------------|------------------------|---------------------------------------|
| 1 | Northeast Region | 3,480 |
| | | |
| 2 | Northwest Region | 4,740 |
| | | |
| 3 | West Central Region | 2,610 |
| 4 | E (C) IP : | 0.000 |
| 4 | East Central Region | 8,880 |
| 5 | Southwest Region | 3,000 |
| 5 | Southwest Region | 3,000 |
| 6 | South-Southwest Region | 270 |
| | _ | |
| Tota | 1 | 22,980 |

Therefore, considering growth between 2004 and 2018, factoring in replacement units, and subtracting out the number of units required to deliver the prior round obligation, the total number of units available to deliver housing for the current round need is *[324,813]* *314,069* units.

| COAH Region | Housing Unit | Replacement | Units | Reduced |
|------------------|--------------|-------------|-------------|---------------|
| | Change | Units | Required to | Units to |
| | (2004-2018) | (2004-2018) | Deliver | Deliver |
| | | | Prior Round | Current Round |
| Northeast Region | 42,492 | 12,697 | -3,480 | 51,709 |
| | | | | |
| Northwest Region | 48,144 | 17,431 | -4,740 | 60,835 |
| | | | | |
| West Central | 48,053 | 4,413 | -2,610 | 49,856 |
| Region | | | | |
| | | | | |
| East Central | 65,864 | 11,355 | -8,880 | 68,339 |
| Region | | | | |
| | | | | |
| Southwest Region | 44,750 | 7,061 | -3,000 | 48,811 |

| South-Southwest Region | 20,145 | 14,644 | -270 | 34,519 |
|---------------------------|---------|--------|---------|---------|
| Total | 269,448 | 67,601 | -22,980 | 314,069 |

EMPLOYMENT GROWTH (2004-2018)

There is a strong link between jobs and housing. New jobs create a demand for housing by attracting new workers into a municipality, who will themselves require housing. (New jobs can also increase municipalities' tax bases.) Therefore, this non-residential development will generate a portion of the State's future affordable housing need.

According to Econsult's analysis (based on employment data from the New Jersey Department of Labor and Workforce Development, described in Appendix F), overall employment is expected to increase Statewide by 790,465 jobs between 2004 and 2018.

| COAH Region | | Employment | Employment | Net Total Employment |
|-------------|---------------------------|------------|------------|----------------------|
| | | 2004 | 2018 | Change (2004-2018) |
| 1 | Northeast Region | 885,699 | 1,063,924 | 178,226 |
| 1 | Northwest Region | 877,676 | 1,068,027 | 190,351 |
| | West Central Region | 584,742 | 700,025 | 115,284 |
| | East Central Region | 575,027 | 726,719 | 151,693 |
| \$ | Southwest Region | 495,337 | 614,834 | 119,497 |
| | South-Southwest Region | 271,209 | 306,625 | 35,418 |
| Total | | 3,689,688 | 4,480,153 | 790,465 |

STATEWIDE GROWTH SHARE RATIOS

New residential and non-residential growth--and the municipalities that experience that growth--will be responsible for addressing the projected affordable housing need (115,666 units). The more municipalities grow, the greater their obligation, or "growth share." A municipality's "growth share" is a function of its actual growth. The Growth Share Ratios show the affordable obligation incurred by growth in housing units and jobs.

Because municipalities' affordable housing need stems from their increase in low- and moderate-income households as well as their increase in jobs (which attract additional employees, themselves in need of housing), there are two ratios: one for housing; and one for employment.

Affordable housing obligation is balanced between housing unit and employment growth, with a slightly greater emphasis on housing unit growth. Assigning roughly 60 percent of projected affordable housing need to projected housing unit growth from 2004 to 2018, and 43 percent to projected net employment growth from 2004 to 2018, results in the following growth share ratios:

New Jersey

57 percent/43 One Affordable Unit among Five Units Produced

percent Split One Affordable Unit for 16 Jobs Created

MUNICIPAL-LEVEL OBLIGATIONS

To generate housing unit and employment growth at the municipal level, Econsult follows a five-step process. First, Econsult projects 2018 figures for each municipality based on its historical growth rate and build-out level. (These individual projections are aggregated at the county level and compared to county control figures. Whenever this sum exceeds county control totals, Econsult proportionally scales the individual projections down.) [page=6075] Second, Econsult verifies these projections against the physical growth capacity of each municipality and ensures that no town has exceeded its maximum growth level. Third, Econsult checks to see that future growth is not significantly faster than historical growth. Fourth, when municipalities exceed both these upper growth limits, the excess population "spills over" into neighboring communities until those communities reach their own upper growth limits. Lastly, these final municipal totals are again summed to the county level and compared to county controls.

These totals provide estimates of growth at the municipal level. It should be noted that these are projections and actual growth will differ. As noted by the New Jersey Department of Labor and Workforce Development, projections "are not intended to constrain or to advocate specific levels of growth in the state. . . These projections are best used as a reference framework for planning, research, and program evaluation."

While municipalities incur affordable housing obligations with actual growth, these totals establish the expected need for affordable units which municipalities are obligated to respond to through zoning and other methods. Municipal-level projections are used as a starting point to determine that municipalities are providing for their fair share of affordable need going forward, with a focus on that portion that can be accommodated through inclusionary zoning of vacant land. At a minimum, municipalities must zone or otherwise provide for their projected increase in housing units based on available vacant land.

Although they are derived from the best available data and methodology, replacement units cannot be reliably predicted

at the municipal or regional level going forward. However, at the statewide level, they provide an estimate for how much growth New Jersey can expect in the future. This actual growth, wherever it takes place, will be captured by the Growth Share Ratios described in this appendix.

In sum, municipalities incur obligations to provide affordable housing only when and to the extent growth occurs. Each municipality's current round affordable housing obligation is based on *actual* growth while maintaining zoning based on projections to establish a realistic opportunity for affordable housing.

- <1> This current round obligation is in addition to municipalities' remaining obligations from prior rounds and rehabilitation obligation. These reflect communities' Rehabilitation Share and Prior Round Affordable Housing Need, described in detail in Appendices B and C.
- <2> These units are removed because they are part of prior round plans to deliver affordable housing.
- <3> Spontaneous rehabilitations were not included in this methodology. Research team members felt that while units were likely brought up to code ("spontaneously rehabilitated") over the course of the study period, others likely fell out of compliance, and it was not possible to verify the number of properties doing either one.
- <4> According to the National Association of Realtors' mortgage calculator--and assuming households could put up to \$ 10,000 toward their down-payment, had the State's average car payment (\$ 447.00, reported by Edmunds Automotive Network) and credit card debt (\$ 165.00, reported by PlasticEconomy.com), took out a loan at 6.375 percent (roughly the average commitment rate for 30-year, fixed rate loans in 2006 and 2007, according to Freddie Mac), and faced a 2.5 percent property tax rate (slightly below the average effective property tax rate for all New Jersey municipalities in 2004, reported by the New Jersey Division of Taxation)--a household earning \$ 52,276 (the state median in 2000) could afford a \$ 109,547 home. U.S. Census data from 2000 indicates that 19.5 percent of specified owner-occupied units were valued below \$ 109,547.

<5> America's Home Forecast: The Next Decade for Housing and Mortgage Finance issued by the Homeownership Alliance, pg. 19.

[page=6076] APPENDIX C

COUNCIL ON AFFORDABLE HOUSING (COAH)

PRIOR ROUND AFFORDABLE NEED UPDATED METHODOLOGY

CONTENTS

INTRODUCTION

THE ADJUSTED BASE

DEMOLITIONS

FILTERING

RESIDENTIAL CONVERSIONS

REACHING AN UPDATED PRIOR ROUND AFFORDABLE HOUSING NEED

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INTRODUCTION

As part of this effort, researchers also reviewed prior round obligation numbers and updated those numbers based on the latest data available for measuring secondary sources of supply. Replicating the existing methodology with updated data (described in detail below) increased municipalities' collective prior round obligation by 992 units in comparison to the 1993 unadjusted obligations. COAH is adopting municipalities' unadjusted 1987 to 1999 obligations, first published in 1993, which totaled 85,964, as shown in this Appendix. These are the numbers under which municipalities received substantive certification for their second round new construction obligations (prior round obligation). The methodology description below details the process researchers undertook to validate and update (where indicated) the prior round obligation numbers.

THE ADJUSTED BASE

In 1993, COAH released municipal-level affordable housing obligations that consisted of Indigenous Need *plus* Reallocated Present Need *plus* Prospective Need (1993 to 1999) *plus* Prior Round Prospective Need *plus* Demolitions *minus* Filtered Units *minus* Residential Conversions *minus* Spontaneous Rehabilitations. The Prior Round Prospective Need, as published in 1993, was updated by the prior research team of Robert W. Burchell and William R. Dolphin, from Rutgers University, in 2004.

Replication efforts followed the methodology described in the Existing Third Round Rules, used data presented in the August 19, 2004, OPRA response, and accepted the chapter Appendix A assertion that 2000 Census data indicated a 25 percent increase in all previously published projections (based on 1993 numbers). This effort recalculated only 1993 to 1999 Prospective Need, Demolitions, Filtered Units, and Residential Conversions. (The First Round Prospective Need was already adjusted in 1993 to reflect the difference between 1987 projections and data published in 1993 based on the 1990 Census.)

This work resulted in a Prior Round Obligation of 3,844 more units than previously published. These updated numbers were used as the Adjusted Base in this methodology.

| COA | H Region | Adjusted Base |
|-------|-----------------|---------------|
| 1 | Northeast | 12,882 |
| | | |
| 2 | Northwest | 7,490 |
| | | |
| 3 | West Central | 17,573 |
| | | |
| 4 | East Central | 32,602 |
| | | |
| 5 | Southwest | 18,303 |
| | | |
| 6 | South-Southwest | 10,582 |
| | | |
| Total | Total | |

Again, the Adjusted Base of 99,432 units consists of the following three components: 1) the first round prior round prospective need of 38,202 units; 2) the second round prospective need of 42,127 units with a 25 percent increase in the 1993 numbers, resulting in 52,658 units; and 3) the second round reallocated present need of 8,572 units. The remaining reallocated present need was credited to the third round Rehabilitation Share.

DEMOLITIONS

Demolition data by municipality is available from the New Jersey Construction Reporter for the years 1996 to 2007. Statewide demolition totals from 1990 to 1999 were listed in the existing Third Round Substantive Rules. To determine the number of demolitions in each municipality between 1993 and 1999, this methodology first gathered municipal-level data for 1996 to 1999 from the New Jersey Construction Reporter. Next, this methodology analyzed the State-level data to determine what portion of New Jersey demolitions occurring between 1993 and 1999 occurred between 1996 and 1999.

| Year | Demolitions | Breakdown |
|------|-------------|------------|
| 1993 | 1,430 | |
| 1994 | 1,471 | 30 percent |
| 1995 | 3,350 | |
| 1996 | 2,642 | |
| 1997 | 4,918 | |
| 1998 | 2,867 | 70 percent |

| 1999 | 4,052 |
|-------|--------|
| Total | 20,730 |

It was assumed that this breakdown held at the municipal level as well, or that each municipal total for 1996 to 1999 represented 70 percent of a community's total number of demolitions from 1993 to 1999. Therefore, to get a demolition figure for 1993 to 1999 at the municipal level, each municipal total from 1996 to 1999 was divided by 70 percent.

To isolate demolitions affecting low- and moderate-income households (by removing stock affordable to these households), this methodology then multiplied municipality demolition totals by 19.5 percent, the portion of New Jersey's housing valued at a level that low- and moderate-income households can afford. <1>

| COAF | H Region | Demolitions (1993-1999) |
|-------|-----------------|-------------------------|
| 1 | Northeast | 587 |
| | | |
| 2 | Northwest | 1,422 |
| | | |
| 3 | West Central | 298 |
| 4 | Ford Constant | 550 |
| 4 | East Central | 556 |
| 5 | Southwest | 383 |
| 3 | Southwest | 303 |
| 6 | South-Southwest | 795 |
| | | |
| Total | | 4,040 |

FILTERING

Econsult reviewed comprehensive property-level data on all paired home transactions in New Jersey from 1989-2006 to identify "filtered" housing unit--those that experienced a significant price change and whose occupant experienced a significant income change. Researchers further refined this analysis to focus only on those units starting or ending at values affordable to low- and moderate-income households or with occupants earning incomes below 80 percent of their regional median. (These methods are described in further detail in chapter Appendix F.)

According to Econsult's analysis (described in further detail in Appendix F), 7,796 units filtered down to households of lower incomes between 1993 and 1999:

COAH Region

Filtering (1993-1999)

| 1 | Northeast | 3,422 |
|-------|-----------------|-------|
| 2 | Northwest | 1,708 |
| 3 | West Central | 402 |
| 4 | East Central | 554 |
| 5 | Southwest | 1,351 |
| 6 | South-Southwest | 359 |
| Total | | 7,796 |

RESIDENTIAL CONVERSIONS

This methodology replicated the technique used in the previously released Third Round Substantive Rules, using the following steps to quantify residential conversions:

- -- The **change in total units** was derived by subtracting the number of housing units reported by the U.S. Census in 1990 from the number of housing units reported by the U.S. Census in 2000.
- -- Certificates of Occupancy numbers are available at the municipal level from the New Jersey Construction Reporter for 1996 to 1999. These totals were extrapolated to the 1990 to 1999 time span by analyzing building permits issued at the state level from 1990 to 1999 (available from the U.S. Census at http://www.census.gov/const/www/C40/table2.html#annual) to determine what portion of New Jersey building permits issued between 1990 and 1999 were issued between 1996 and 1999. It was assumed that the same breakdown held at the municipal level, or that each municipal total for 1996 to 1999 represented 48 percent of a community's total number of certifications from 1990 to 1999. [page=6078] Therefore, to get a certification figure for 1990 to 1999 at the municipal level, each municipal total from 1996 to 1999 was divided by 48 percent.
- -- **Demolition** data was collected at the municipal level from the New Jersey Construction Reporter for the years 1996 to 1999. To determine the number of demolitions in each municipality between 1990 and 1999, this methodology analyzed the State-level data to determine what portion of New Jersey demolitions occurring between 1990 and 1999 occurred between 1996 and 1999. It was assumed that this breakdown held at the municipal level, or that each municipal total for 1996 to 1999 represented 55 percent of a community's total number of demolitions from 1990 to 1999. Therefore, to get a demolition figure for 1990 to 1999 at the municipal level, each municipal total from 1996 to 1999 was divided by 55 percent.

Residential Conversions = Change in Units minus C of Os plus Demolitions

This methodology assumed that 19.5 percent of residential conversions were occupied by low- or moderate-income households. (In 2000, this portion of all New Jersey housing units was affordable to low- and moderate-income households.) The number of residential conversions affecting low- and moderate-income households between 1993 and 1999 is simply two-thirds (66.67 percent) of the Low-/Moderate-Income Share of Residential Conversions occurring between 1990 and 1999.

If a municipality lost low- or moderate-income units through conversions (the case in 257 communities), its residential conversion figure was 0. This was done because filtering numbers implicitly account for any loss of stocks.

Ultimately, these calculations indicated that there were 8,720 residential conversions statewide between 1993 and 1999:

| COAH Region | | Residential Conversions | |
|-------------|-----------------|-------------------------|--|
| | | (1993-1999) | |
| 1 | Northeast | 2,338 | |
| | | | |
| 2 | Northwest | 1,833 | |
| | | | |
| 3 | West Central | 1,334 | |
| | | | |
| 4 | East Central | 1,273 | |
| | | | |
| 5 | Southwest | 1,299 | |
| _ | | | |
| 6 | South-Southwest | 643 | |
| | | 0.700 | |
| Total | | 8,720 | |

REACHING AN UPDATED PRIOR ROUND AFFORDABLE HOUSING NEED

The Updated Affordable Housing Need in is equal to the Adjusted Base *plus* Demolitions *minus* Filtering *minus* Residential Conversions. <2> According to this analysis, 58 municipalities had negative Updated Prior Round Need numbers. Converting these negative figures to zero results in the following regional and Statewide totals: <3>

| COAH Region | | Updated Prior Round Need |
|-------------|--------------|--------------------------|
| 1 | Northeast | 11,355 |
| | | |
| 2 | Northwest | 6,774 |
| | | |
| 3 | West Central | 16,310 |

| 4 | East Central | 31,931 |
|-------|-----------------|--------|
| 5 | Southwest | 16,988 |
| 6 | South-Southwest | 10,456 |
| Total | | 93,813 |

This total is 7,849 units higher than that calculated in 1993 (85,964).

AFFORDABLE HOUSING ASSISTED THROUGH FEDERAL AND STATE PROGRAMS

COAH additionally reviewed data describing the number of housing units allocated between 1987 and 1999 through the Federal Low Income Housing Tax Credit (LIHTC) program and the State's Balanced Housing (BH) Program.

| COAH Region | | LIHTC Units | BH Units | Total |
|-------------|-----------------|-------------|----------|-------|
| 1 | Northeast | 1,315 | 503 | 1,818 |
| 2 | Northwest | 2,107 | 544 | 2,651 |
| 3 | West Central | 48 | 136 | 184 |
| 4 | East Central | 1,166 | 660 | 1,826 |
| 5 | Southwest | 465 | 420 | 885 |
| 6 | South-Southwest | 579 | 79 | 658 |
| Total | | 5,680 | 2,173 | 7,853 |

[page=6079] These units were built but never credited toward any municipal affordable housing plan. COAH will not provide credit for these units to individual municipalities but will instead credit the total updated Statewide need of 93,813, to reach an updated prior round need number of 85,960 (93,813-7,853 = 85,960), nearly the same as that published in 1993.

The municipal level figures are as follows:

(No change to table.)

Municipalities affected by the 1,000-unit limitation described in N.J.A.C. 5:97-5.8 will be subject to verification and validation at the time a municipality submits its petition for substantive certification.

Municipalities that were previously granted an employment adjustment may utilize the resulting adjusted 1987-1999 obligation.

- <1> According to the National Association of Realtors' mortgage calculator--and assuming households could put up to \$10,000 toward their down-payment, had the state's average car payment (\$447.00, reported by Edmunds Automotive Network) and credit card debt (\$165.00, reported by PlasticEconomy.com), took out a loan at 6.375 percent (roughly the average commitment rate for 30-year, fixed rate loans in 2006 and 2007, according to Freddie Mac), and faced a 2.5 percent property tax rate (slightly below the average effective property tax rate for all New Jersey municipalities in 2004, reported by the New Jersey Division of Taxation)--a household earning \$52,296 (80% of the state's median family income in 2000) could afford a \$109,547 home. U.S. Census data from 2000 indicates that 19.5 percent of specified owner-occupied units were valued below \$109,547.
- <2> Spontaneous rehabilitations were not included in this methodology since, while units were likely brought up to code ("spontaneously rehabilitated") over the course of the study period, others likely fell out of compliance, and it was not possible to verify the number of properties doing either.
- <3> If these negative figures were not zeroed out but kept as negative values, the Statewide Update Prior Round Need would be 86,956 and the regional subtotals as follows:

| COAH Region | | Updated Prior Round Need | |
|-------------|-----------------|--------------------------|--|
| 1 | Northeast | 7,709 | |
| | | | |
| 2 | Northwest | 5,371 | |
| | | | |
| 3 | West Central | 16,135 | |
| | | | |
| 4 | East Central | 31,331 | |
| | | | |
| 5 | Southwest | 16,035 | |
| | | | |
| 6 | South-Southwest | 10,374 | |

[page=6080] APPENDIX D

UCC USE GROUPS FOR PROTECTING AND IMPLEMENTING NON-RESIDENTIAL COMPONENTS OF GROWTH SHARE

A one in 16 non-residential ratio shall be used to determine the number of affordable units to be created for each new job created in a municipality. For every 16 new jobs created in a municipality, as measured by new or expanded non-residential construction, the municipality shall have the obligation to provide one affordable residential unit. New jobs created shall be based on the gross square footage of non-residential development and on the use group of the facility being constructed. Use groups are as defined by the International Building Code (IBC) which has been incorporated by reference into the Uniform Construction Code (UCC). The following chart shall be used to project and implement the non-residential component of growth share:

| Use Group | Description | Square Feet Generating One Affordable Unit | Jobs Per 1,000 Square Feet |
|--------------|--|--|-------------------------------------|
| B-Business | Use of a building or structure, or a | 5,714 | 2.8 |
| D Business | portion thereof, for office, | 3,711 | 2.0 |
| | professional or service-type | | |
| | transactions, including storage of | | |
| | records and accounts amongst others. | | |
| | Examples include, but are not limited | | |
| | to, corporate and professional offices, | | |
| | banks, outpatient clinics, motor vehicle | | |
| | showrooms, and offices in higher | | |
| | education institutions.* | | |
| M-Mercantile | Buildings and structures, or a portion | 9,412 | 1.7 |
| | thereof, used to display and sell | | |
| | products accessible to the public. | | |
| | Includes retail stores, strip malls, | | |
| | shops and gas stations. | | |
| F-Factory | Factories where people make, process, or | 13,333 | 1.2 |
| Industrial | assemble products. Includes automobile | | |
| | manufacturers, electric power plants, | | |
| | foundries, and incinerators. F use group | | |
| | includes F1 and F2. | | |
| S- Storage | Use of a building or structure, or a | 16,000 | 1.0 |

| | portion thereof for storage not | | |
|-----------------|--|---------|---------|
| | classified as hazardous occupancy. | | |
| | Examples include warehouses, | | |
| | lumberyards, and aircraft hangers | | |
| | amongst others. S group includes S1 and | | |
| | S2, but parking garages are excluded.*** | | |
| H-Hazardous | High Hazard manufacturing, processing, | 10,000 | 1.6 |
| | generation and storage uses. H group | | |
| | includes H1, H2, H3, H4 and H5. | | |
| A1 | Assembly uses including theaters, | 10,000 | 1.6 |
| | concert halls and TV and radio studios. | | |
| A2 | Assembly uses including casinos, night | 5,000 | 3.2 |
| | clubs, restaurants and taverns. | | |
| A3 | Assembly uses including libraries, | 10,000 | 1.6 |
| | lecture halls, arcades, galleries, | | |
| | bowling alleys, funeral parlors, | | |
| | gymnasiums and museums but excluding | | |
| | houses of worship, covered athletic | | |
| | fields, and higher education uses.* | | |
| A4 | Assembly uses including arenas, skating | 4,706 | 3.4 |
| | rinks and pools. | | |
| A5 | Assembly uses including amusement park | 6,154 | 2.6 |
| | structures and stadiums, but bleachers | | |
| | and grandstands are excluded. | | |
| E-Educational | | | |
| | Schools K - 12 | Exclude | Exclude |
| I-Institutional | Institutional uses such as assisted | 6,154 | 2.6 |
| | living facilities, hospitals, nursing | | |
| | homes, jails, and day care facilities. | | |
| | I group includes I1, I2, I3 and I4.** | | |

R1 Hotels, motels, dormitories, and 9,412 1.7

continuing care retirement communities

that are classified as R2.

U-Utility Miscellaneous uses. Fences, tanks, Exclude Exclude

barns, agricultural buildings, sheds,

greenhouses, etc.

* Offices as defined in the most recent Postsecondary Education Facilities Inventory Classification Manual (FICM) published by the National Center for Education Statistics, U.S. Dept. of Education. Non-office higher education uses noted in Section 303.1 "Exceptions" of the building subcode as adopted by N.J.A.C. 5:23-3.14 are excluded. Classroom and classroom laboratory facilities, conference rooms, meeting rooms, and study facilities are examples of A3 Assembly exclusions.

** Replacement square footage of hospitals and nursing homes (I-2) within the same COAH Region are excluded pursuant to N.J.A.C. 5:94-2.5(b)2v. *** In recognition of the disparity between self-storage and distribution centers in this category, actual jobs created may be submitted by municipalities for this use group.

In the case of mixed-use development, the jobs calculation will be assigned in proportion to the square footage of each use in the mixed use development.

For example, if a municipality issues a certificate of occupancy for a 10,000 square foot restaurant (use group A2), the affordable housing obligation would be 10,000 5,000 or two affordable units. Alternatively, the affordable housing obligation for this same development could be calculated by applying a ratio of one unit for each 16 jobs created as follows: 10,000 1,000 x 3.2 16 = 2.

[page=6081] APPENDIX E

CRITERIA FOR POST-1986 CREDITS

In order to be eligible as a post-1986 credit, as referenced in N.J.A.C. 5:97-4.3, affordable housing developments and units must meet the following criteria:

Distribution of low- and moderate-income units:

With the exception of inclusionary developments constructed pursuant to the four percent low-income tax credit regulations pursuant to the Internal Revenue Code Section 42h, at least half of all affordable units within each affordable housing development are affordable to low-income households.

With the exception of inclusionary developments constructed pursuant to the four percent low-income tax credit regulations pursuant to the Internal Revenue Code Section 42h, at least one-third of all affordable units in each bedroom distribution (pursuant to below) are affordable to low-income households.

Bedroom distribution for affordable housing developments that are not age-restricted:

The combination of efficiency and one-bedroom units is at least 10 percent and no greater than 20 percent of the total low- and moderate-income units.

At least 30 percent of all low- and moderate-income units are two-bedroom units.

At least 20 percent of all low- and moderate-income units are three-bedroom units.

Bedroom distribution for affordable housing developments that are age-restricted:

At a minimum, the number of bedrooms equals the number of age restricted low- and moderate-income units within the inclusionary development. The standard can be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

Rents and prices of affordable units:

The following criteria was used to determine the initial maximum rents and sale prices of affordable units:

- 1. Efficiency units are affordable to one-person households;
- 2. One-bedroom units are affordable to 1.5-person households;
- 3. Two-bedroom units are affordable to three-person households; and
- 4. Three-bedroom units are affordable to 4.5-person households.

The initial price of a low- and moderate-income owner-occupied single family housing unit was established so that after a down payment of five percent, the monthly principal, interest, homeowner and private mortgage insurances, property taxes (property taxes shall be based on the restricted value of low and moderate income units) and condominium or homeowner fees did not exceed 28 percent of the eligible gross monthly income. The master deeds of inclusionary developments regulating condominium or homeowner association established fees or special assessments of low- and moderate-income purchasers at a specific percentage of those paid by market purchasers. The percentage that shall be paid by low- and moderate-income purchasers is at least one third of the condominium or homeowner association fees paid by market purchasers. Once established within the master deed, the percentage shall not be amended without prior approval from the Council.

Gross rents of affordable units, including an allowance for utilities, was established so as not to exceed 30 percent of the gross monthly income of the appropriate household size. Those tenant-paid utilities that are included in the utility allowance are so stated in the lease. The allowance for utilities shall be consistent with the utility allowance approved by HUD for use in New Jersey. Any increases in rents and sales prices did not exceed the annual maximums permitted

by COAH's regulations.

Affordability Average

For affordable housing developments constructed before January 1, 2001, the initial maximum average rent or price of low- and moderate-income units within each development was affordable to households earning 57.5 percent of median income. The moderate income sales units were available for at least three different prices and low income sales units were available for at least two different prices. For rental units, there must have been one rent for a low- income unit and one rent for a moderate-income unit for each bedroom distribution.

For affordable housing developments that received preliminary or final approvals on or after January 2, 2001 the initial maximum rents of low- and moderate-income units within each development were affordable to households earning no more than 60 percent of median income. In averaging an affordability range of 52 percent for rental units, there must have been one rent for a low-income unit and one rent for a moderate-income unit for each bedroom distribution. The initial maximum sales prices of low- and moderate-income units within each development were affordable to households earning no more than 70 percent of median income. In averaging an affordability range of 55 percent for sales units, the moderate-income sales units were available for at least two different prices and low-income sales units were available for at least two different prices.

[page=6082] APPENDIX F

CONSULTANT REPORTS

COUNCIL ON AFFORDABLE HOUSING (COAH)

CONTENTS

- 1. ANALYSIS OF VACANT LAND IN NEW JERSEY AND ITS CAPACITY TO SUPPORT FUTURE GROWTH
- 2. ALLOCATING GROWTH TO MUNICIPALITIES
- 3. ESTIMATING THE DEGREE TO WHICH FILTERING IS A SECONDARY SOURCE OF AFFORDABLE HOUSING
- 4. INCLUSIONARY HOUSING: LESSONS FROM THE NATIONAL EXPERIENCE
- 5. COMPENSATORY BENEFITS TO DEVELOPERS FOR PROVISION OF AFFORDABLE HOUSING
- 6. COUNTING JOBS AT THE LOCAL LEVEL

Analysis of Vacant Land in New Jersey And Its Capacity to Support Future Growth

Prepared by
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For The Council on Affordable Housing Department of Community Affairs State of New Jersey

Final Report May 2, 2008

Table of Contents

[page=6084]

- 1.0 Introduction
 - 1.1 Revisions and Expansion of Project Scope
- 2.0 Regional Planning Areas
- 3.0 Vacant Land Analysis
 - 3.1 Rest of State
 - 3.1.1 Flood Hazard Area Constraints
 - 3.1.2 Net Vacant Land
 - 3.2 Meadowlands
 - 3.3 Pinelands
 - 3.4 New Jersey Highlands Planning Area
 - 3.5 New Jersey Highlands Preservation Area
 - 3.6 Vacant Land Results
- 4.0 Land Capacity Analysis
 - 4.1 Rest of State
 - 4.1.1 Residential Density Matrix
 - 4.1.2 Non-Residential Densities
 - 4.1.3 Land Use Mix

- 4.1.4 Minimum Parcel Size
- 4.1.5 Residential Buildout Results
- 4.1.6 Non-Residential Buildout Results
- 4.1.7 Non-Residential Buildout Results
- 4.2 New Jersey Meadowlands
- 4.3 New Jersey Pinelands
 - 4.3.1 Residential Densities
 - 4.3.2 Non-Residential Densities
 - 4.3.3 Minimum Parcel Size
 - 4.3.4 Buildout Results
- 4.4 New Jersey Highlands Planning Area
 - 4.4.1 Use of Highlands Spatial Land Use Data
 - 4.4.2 Development Capacity and Affordable Housing Estimate
- 4.5 New Jersey Highlands Preservation Area
 - 4.5.1 Exempt Parcels
 - 4.5.2 Non-Exempt Parcels
- 4.6 Land Capacity Results
- 4.7 Potential Development Capacity Constraints
- 5.0 Redevelopment Potential
 - 5.1 Residential Redevelopment
 - 5.2 Non-Residential Land Redevelopment
 - 5.3 Redevelopment Summary
- 6.0 Growth Area Capacity
- 7.0 Conclusions

Exhibit A--Land Use/Land Cover Data Dictionary

Exhibit B--Spatial Data List

Exhibit C--COAH Regions, Counties

[page=6085] **1.0** Introduction

The National Center for Neighborhood & Brownfields Redevelopment (the Center) was requested by the New Jersey Council on Affordable Housing (COAH) to:

- -- Prepare a comprehensive analysis of vacant available land in the State of New Jersey;
- -- Estimate the capacity of that land to support future residential and non-residential development; and
- -- Estimate the amount of redevelopment that would occur statewide in the future.

These tasks are part of a larger project encompassing the analysis and revision of COAH's proposed Third Round Affordable Housing Rules, which is being led by the Penn Institute for Urban Research and Wharton GIS Lab at the University of Pennsylvania (U. Penn Team). The results produced by the Center will be used for three primary purposes:

- -- To determine if there is sufficient vacant land and remaining development capacity to support the State's projections of growth in households and employment out to at least the year 2018;
- -- To determine if there is sufficient vacant land and remaining development capacity in growth areas of the State as a whole and in each of the COAH Regions, to support the use of a growth-share methodology and growth-share ratios for distributing affordable housing needs; and,
- -- To provide an estimated upper ceiling or limit on the amount of household and employment growth that each of the 566 municipalities in the State will be able to absorb before it becomes fully developed.

1.1 Revisions and Expansion of Project Scope

A Draft Report was submitted to COAH by the Center on October 5, 2007, and was reviewed and made public by the COAH Board on October 10th. Written comments and questions were subsequently received by COAH from several interested stakeholder groups, and the Center participated in discussions of the report and related issues with representatives of COAH and these interested stakeholders. In response, COAH requested the Center to revise and expand its vacant land and development capacity analysis to include the Flood Hazard Area Control Act Rules which were adopted by the Department of Environmental Protection subsequent to the issuance of the Draft Report, on November 5th. These Rules restrict development of lands located in flood hazard and riparian zones of regulated waters, as described in N.J.A.C. 7:13-3 and 4. The Center was also asked to comment on the potential long-term impacts of: 1) the DEP's proposed amendments to the State's Water Quality Management Planning Act Rules, as published in the New Jersey Register on May 21, 2007; and 2) the Highlands Regional Master Plan--Draft Final and supporting technical information issued on November 30, 2007.

The Center's revised Final Report, dated December 31, 2007 was published in the New Jersey Register on January 22, 2008 as one of the several consultant reports supporting COAH's proposed 3rd Round Affordable Housing Rules. COAH subsequently conducted five public hearings and received hundreds of written comments from interested stakeholders with regard to its proposed Rules and supporting consultant reports. In addition, meetings were held by

COAH and the Center with:

- -- NJ Highlands officials to discuss the status and clarify the potential impacts of the Highlands Regional Master Plan (RMP);
- -- DEP staff to discuss the availability of additional spatial data related to the recently adopted Flood Hazard Area Control Act and pending expansion of C-1 stream classifications, and to clarify how development and redevelopment may be impacted by the floodplain and buffer constraints included in the Act; and,
- -- DEP staff to seek further clarification on how the pending Water Quality Management Act Rule would affect vacant lands and development within current sewer service areas.

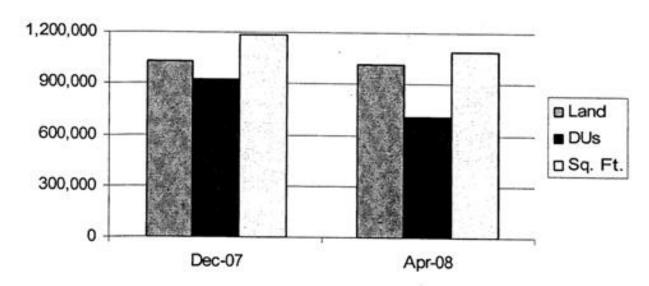
After consultation with COAH and the U Penn lead consulting team, it was decided that the vacant land and development capacity analysis contained in the Center's December 31st Report was to be revised as follows:

- -- Use new DEP spatial data to expand the definition of C-1 streams to include all headwaters and thus increase the riparian buffers to 300 feet on both sides of such streams, and to identify streams flowing through areas that contain acid producing soils and thus require minimum 150 foot buffers;
- -- Remove environmentally sensitive lands from current sewer service areas and recompute the development capacity of lands supported by septic systems pursuant to the pending Water Quality Management Act Rule (WQMR);
- -- Use recently released Highlands spatial and other data to recompute the development capacity of lands in the Highlands Planning Area based on local zoning land use and densities. These buildout results will approximate the baseline or probable maximum capacity of lands within the Planning Area pursuant to the pending Highlands Regional Master Plan; and,
- -- Remove environmentally sensitive lands from current sewer service areas and recompute the development capacity of lands supported by septic systems within the Highlands Planning Area, pursuant to the DEP's pending WQMR and as being applied to other areas of the State. Municipalities in the Planning Area will be required to either implement the DEP's pending Rules or voluntarily conform to the Highlands RMP, both of which will result in the imposition of additional land use constraints and thus lower development capacity below the baseline discussed above.

These changes are intended to reflect a conservative estimate of the impacts of adopted and soon to be adopted environmental constraints on the development of vacant lands across the State. As described more fully later in this report, the actual impacts will not be determined until municipalities fully implement the pending WQMR through development of county-wide wastewater management plans, the 83 Highlands municipalities with lands in the Planning Area choose to voluntarily conform to the RMP or not, and individual development and redevelopment projects that may infringe on floodplain, wetlands or riparian buffers are reviewed and approved or not.

Factoring in these revisions, the Center estimates that there are 1,012,692 acres of unstrained and undeveloped vacant land in the State, and that this land has a residential development capacity of 711,670 dwelling units and non-residential capacity space of 1,090.6 million square feet.

NJ Vacant Land & Development Capacity



Click here for image

2.0 Regional Planning Areas

The State of New Jersey is divided into different planning, environmental and regional governing areas that are regulated or guided by rules established by the Office of Smart Growth (OSG) and State Planning Commission, Department of Environmental Protection (DEP), Meadowlands Commission, Highlands Council and Pinelands Commission. Some are statewide while others are regional in nature, and they often overlap one another, sometimes dissecting municipalities into multiple parts with different rules for determining what lands are vacant and available for future development, the types of development permitted and the densities at which development should occur. In an effort to take all of these variables into proper consideration, the Center utilized the following resources in developing its analysis of vacant land and the capacity of that land to support future growth:

- -- Meadowlands, Highlands and Pinelands--These three regional planning organizations govern the use of about 1.4 million acres of land (the Highlands Council shares authority over the Preservation Area with the DEP), and use different definitions and methods for determining vacant land, buildable area, land uses and development densities. The Center worked closely with each organization to calculate vacant land and development capacity in a manner that was consistent with their land use rules and regulations.
- -- Draft State Plan and State Plan Policy Map--The State Development and Redevelopment Plan divides the State into planning areas that share common conditions with regard to development and environmental features, and identifies:
 - -- Areas for Growth--Metropolitan (PA-1), Suburban (PA-2) and Designated Centers
 - -- Areas for Limited Growth: Fringe (PA-3), Rural (PA-4), and Environmentally Sensitive (PA-5)
 - -- Areas for Conservation: Fringe (PA-3), Rural (PA-4), and Environmentally Sensitive (PA-5)

The Center used residential densities consistent with the objectives of the State Plan and market trends to calculate the capacity of vacant lands outside of the Meadowlands, Highlands Region and the Pinelands to support future growth.

-- Sewer Service Area--DEP spatial data was used to identify vacant lands within existing sewer service areas, and those that were not. The Center used residential densities consistent with the objectives of the State Plan and market trends to calculate the capacity of vacant lands located within a sewer service area (SSA), and used septic densities provided by the DEP at the watershed level to calculate the capacity of lands located outside of an SSA.

3.0 Vacant Land Analysis

Vacant land is defined as those lands which are undeveloped and not environmentally or otherwise constrained from future development, based on current State or regional agency regulations and policies. The Center divided the State into five geographic and regional units in order to recognize differences in regulatory and policy land use constraints imposed by the three regional planning agencies versus other areas of the State, as well as the availability and use of data sources of differing quality and detail:

- -- Meadowlands
- -- Pinelands
- -- Highlands Planning Area
- -- Highlands Preservation Area
- -- Rest of State

The most current version (Version 3--June 2007) of the Draft State Plan Policy Map was provided by OSG and used to delineate State Planning Areas and the boundaries of the Meadowlands and Pinelands. The Highlands boundaries were downloaded from its web site. The three regional areas were extracted from the LU/LC base map and addressed separately as described in this report. A number of municipalities partly located in the Meadowlands and Pinelands were split into two parts, and vacant land was computed separately for each section based on rules appropriate to that area.

A number of other spatial layers were overlaid on the resulting data so that each vacant land spatial polygon created had attributes which allowed the results to be condensed and summarized by:

- -- Municipality (1980 FIPS Code)
- -- County
- -- COAH region

[page=6087] -- Type of Community (Urban, Suburban Exurban and Rural based a methodology developed by the Center for Urban Policy Research at Rutgers University)

- -- State Planning Area
- -- Designated Center
- -- Sewer Service Area (NJDPES Permit number if available)

Although the data used in this analysis is the most current and accurate available, and the methodology for estimating vacant land was the most thorough and appropriate, there may be differences at the municipal or community level when compared to local on-the-ground knowledge of individual land parcels. Many individual municipalities and counties have developed GIS databases based on local property tax parcel information, and amended it to include local knowledge and land uses and constraints. However, that data is not available for all municipalities and counties, and most of what has been prepared has not been reviewed for completeness and consistency by NJDEP or the Office of Smart Growth. COAH anticipates that accurate and uniformly prepared parcel based data will be available on a statewide basis in several years, and it hopes to use this more preferred and accurate data in the future once it is uniformly available.

3.1 Rest of State

A number of studies of vacant land at the municipal, county, regional and state level have been conducted in recent years by different organizations using differing methodologies and spatial data sets. The Center felt that it was critical for COAH to use the most current and accurate spatial data available, and that it use a set of assumptions and methodologies that were supported by the State's Office of Smart Growth (OSG) and Department of Environmental Protection (DEP). To this end a meeting was held in May 2007 with representatives from OSG, DEP, COAH, the Center and the U Penn Team, to discuss what data was available and how it should be used to produce the most accurate estimate of vacant land under current State regulation and land use policies.

It was agreed that vacant land outside of the New Jersey Highlands, Pinelands and Meadowlands ("Rest of State") would be calculated by the Center using spatial files made available by OSG, DEP and the NJ Department of Agriculture. The DEP's 2002 LU/LC spatial file would be used as the base file, and the following spatial data would be removed/subtracted from it to obtain vacant lands available for future development (see Exhibit A for LU/LC Dictionary and Exhibit B for list of spatial files):

- 1. All lands within the legislated boundary lines of the New Jersey Highlands, Pinelands and Meadowlands;
- 2. Lands already developed (IDs 1 5 in Dictionary);
- 3. Undeveloped-Unavailable Lands (IDs 10 & 11);
- 4. Undeveloped Wetlands (ID 9);
- 5. Public open space, parks, etc. (from OSG);
- 6. Private open space (from OSG);
- 7. Preserved farmlands (from NJ Department of Agriculture);
- 8. Buffers around C-1 streams (calculated by Center);
- 9. Developed areas within LU/LC code 1700 (from DEP); and
- 10. Upper Wetlands Boundary/Upper Wetlands Limit (from DEP).

The lands that were removed in this process included those that were already developed; waters and wetlands where development is either not permitted or highly restricted under current DEP rules, including 300 foot buffers around all Category One streams and their primary tributaries; parks, and privately and publicly acquired lands for open space or

land conservancy purposes; preserved farmlands; and other lands deemed by DEP to be unavailable for development pursuant to current environmental rules and regulations.

3.1.1 Flood Hazard Area Constraints

The Center subsequently expanded the above list of constrained lands to remove flood plains and riparian zones described in the Flood Hazard Area Control Act Rule (N.J.A.C. 7:13) adopted on November 5, 2007. Combined with related amendments to the Coastal Permit Program rules (N.J.A.C. 7:7) and the Coastal Zone Management rules (N.J.A.C. 7:7E), the DEP is applying more stringent standards for development in flood hazard areas and riparian zones adjacent to surface waters throughout the State. "The Department has adopted these new rules in order to better protect the public from the hazards of flooding, preserve the quality of surface waters, and protect the wildlife and vegetation that exist within and depend upon such areas for sustenance and habitat. In order to minimize the impacts of development on flooding, a 0% net-fill requirement (which was previously implemented only in the Highlands Preservation Area and Central Passaic Basin) will now apply to all non-tidal flood hazard areas of the State." <1>

The flood hazard and floodway areas used by the Center are based on a spati1 database compiled by DEP using FEMA Flood Insurance Rate Maps (FIRM) covering the State's counties and municipalities as of 1996. These maps identify land areas that have a 1% annual chance of flooding in any given year. The statewide database was developed through the merger of about two thousand individual paper scanned and other spatial files obtained through FEMA, and as such they may not perfectly edge-match or exactly follow the more accurate 2002 LU/LC digital imagery. The Center updated this database by overlaying more recently prepared and publicly available FEMA Flood Insurance Rate Maps for eight counties. Although this revised and updated spatial database may also not include some floodways in the state that have not have been mapped by DEP or FEMA, the Center believes that this it is the most comprehensive and accurate data that is currently available on a statewide scale.

The Flood Hazard Area Control Act Rules limit, but do not prohibit new construction or redevelopment of existing structures in the floodplain. Construction outside the floodway (flood fringe area) in non-tidal waters that does not displace flood storage volume (zero net fill), and projects that are not a "major development" as defined at N.J.A.C. 7:8-1.2 and therefore not subject to the requirements of the Stormwater Management rules at N.J.A.C. 7:8 may be permitted. In addition, fill in the floodway is allowed, provided that the fill is compensated by excavation within some distance of the fill. Tidal waters, such as bays and inlets do not have floodways, so the flood hazard area along these waters is considered to be flood fringe lands and new development and/or redevelopment may be permitted without zero net fill constraint.

Permits to construct new residential and non-residential buildings or to redevelop existing structures within flood hazard areas are granted by DEP on a case by case basis, require extensive engineering studies and often take longer than a year to prepare and obtain a permit. Several hundred are granted each year, but it 'was impossible for the Center to develop spatial land use attributes that would incorporate such possible variances from the Rules into its GIS based statewide land use model; i.e., the Center could not construct a methodology that would identify specific lands that were likely to obtain a variance or determine at what density they could be developed. The Center's model thus had to assume that no construction would occur within any of these floodplain areas, and as a result it is more constraining on development than what may actually occur in the future.

[page=6088] "The new rules also expand the preservation of near-stream vegetation (previously protected within 25 or 50 feet of streams) by implementing new riparian zone that are 50, 150 or 300 feet in width along each side of surface waters throughout the State. The riparian zone width depends on the environmental resources being protected, with the most protective 300-ft riparian zone applicable to waters designated as Category One and certain upstream tributaries. Certain waters supporting trout, or habitats of threatened or endangered species critically dependant on the watercourse to survive, or watercourses which flow through areas that contain acid-producing soil deposits, receive a 150-ft riparian zone." <2>

The DEP's Water Monitoring and Standards program coded-in the current Surface Water Quality Standards (SWQS) data list onto a draft copy of the new 2002 stream network. The 2002 streams were delineated off the 2002 LU/LC imagery and show streams down to less than 10 ft in length. The spatial data layer provided by DEP for this analysis reflects the stream classifications and anti-degradation designations adopted as of October 16, 2006. The data is in draft form, currently under review, and is expected to be released to the public in early 2008. The Center constructed buffers along all such streams consistent with the riparian zone definitions using this DEP stream classification data. Additional spatial data was provided by DEP in March 2008 to expand the C-i stream classification to include their headwaters and to identify and modify buffers along streams in areas containing acid producing soils.

The Rules also incorporate the 150 foot transition areas along freshwater wetlands of extraordinary resource value, 50 foot areas along wetlands of intermediate resource value, and zero transition area along wetlands classified as ordinary resource value, as stipulated in the State's Freshwater Wetlands Protection Act (N.J.A.C. 7:7A). The Center was unable to locate or obtain any database that classifies the State's numerous wetlands into these resource value categories. After discussions with DEP, it was decided that a 100 foot buffer would be created by the Center along the boundaries of all unmodified and unaltered freshwater wetlands (LU2002_codes 6210 through 6500 listed under ID #9, Exhibit A) as a surrogate in this analysis.

It is important to reiterate that most DEP regulations, including the recently adopted Flood Hazard Area Control Act, are intended to protect critical environmental resources across the state, but that they may be waived or narrowed on a site by site basis in response to developer and/or municipal government requests for a variance/permit. This process generally requires an extensive engineering analysis and DEP technical review. As such, the Center's spatial analysis may result in a more conservative estimate of development potential than may be permitted in these areas.

3.1.2 Net Vacant Land

It was determined in this revised analysis that there are 681,090 acres of undeveloped and unconstrained vacant land in the State outside of the three regions.

3.2 Meadowlands

The New Jersey Meadowlands Commission has a comprehensive and up-to-date spatial database of the entire District which identifies developed, constrained and vacant land at the individual parcel level. A detailed review of this spatial database by Meadowlands Planning staff indicated that several undeveloped parcels are right-of-ways, roads, water or otherwise not vacant. After these adjustments and consideration of the new Flood Hazard Area rule, it was determined that there are only 224 acres of vacant buildable land remaining in the Meadowlands.

3.3 Pinelands

The New Jersey Pinelands Commission has an extensive spatial database that supports its Comprehensive Management Plan Land Capability Map, including parcel level detail on constrained and federal owned lands. However, it does not specifically identify vacant lands. The Center therefore used the same Rest of State methodology and data sources to create an initial spatial analysis and map for the Pinelands planning staff to review and compare with their own in-house studies.

Three differences between the Center's and Pinelands' results were found. The first was resolved by the Pinelands providing more extensive open space and constrained land information than was contained in the DEP data that had been made available to the Center. This included lands subject to the Coastal Area Facilities Review Act (CAFRA) regulation. The second was resolved by reclassifying a U.S. Air Force site from undeveloped to developed land, and the Pinelands staff providing spatial data for all federal lands in the District. The third was a difference in the treatment of

LU/LC Code 1700 (Other Urban or Built-Up Land). Because the DEP had manually reviewed all major parcels in this category and removed any that were believed to be developed, the Center chose to leave the balance of such lands classified as undeveloped and thus vacant.

The Center subsequently removed lands constrained under the recently adopted Flood Hazard Area Control Act (see Sections 3.1.1 above), which resulted in a revised estimate of 220,268 acres of undeveloped and unconstrained vacant land in the Pinelands.

3.4 New Jersey Highlands Planning Area

The Highlands Water Protection and Planning Act divided the Highlands Region into the Planning Area and the Preservation Area. Although it gave overall planning authority for the Region to the Highlands Council, determination of where and under what conditions future development could occur in the Preservation Area was delegated to the DEP. These restrictions will be included in the Highlands Regional Master Plan which is expected to be adopted about June or July 2008 and subsequently submitted to the State Planning Commission for endorsement later in the year. With concurrence from DEP, the Highlands Council and COAH, the Highlands were divided into the two regional areas for purposes of determining vacant land. A number of towns were split into two parts, and vacant land was computed separately for each section based on rules appropriate to the Planning and Preservation Areas.

The Highlands Council issued a Regional Master Plan--Final Draft and supporting technical information on November 30, 2007. The Plan imposes restrictions on development in buffered areas around all streams, wetlands and other critical resource areas, as well as in areas with slopes of 15 percent or greater, agricultural, and forested lands in the Planning Area. It also strengthens the previously adopted DEP restrictions on land use in the Preservation Area. Within 60 days of its adoption, the Plan must be submitted to the State Planning Commission for endorsement. As provided in an Memorandum of Understanding signed in December 2007 between the Highlands Council (Council), Office of Smart Growth (OSG) and State Planning Commission (SPC), the SPC and OSG will provide the Council with copies of all information concerning a petition for Plan Endorsement by a municipality with lands in the Planning Area, and will consult with and consider and recommendations made by the Council before approving, rejecting and approving with conditions any such petition. This MOU will provide the Council with an ability to influence and possibly control future land use development in a municipality even if it has decided not to conform to the Highlands Regional Master Plan. The Center used the Rest of State vacant land methodology and data sources to create an initial spatial analysis of vacant land for the Planning Area. It then subtracted or removed a hydrology layer of stream buffers, using a downloaded copy of the Highlands Open Waters Protection Area spatial file from the Highlands web site, a steep slopes layer, using a downloaded copy of the Slope Greater Than 15 Percent, Undeveloped spatial file and an updated Open Space spatial file on the same web [page=6089] site, to create a final vacant land spatial file. It was determined that the Highlands Open Waters Protection Area spatial layer already represents those lands constrained under the recently adopted Flood Hazard Area Control Act.

Total vacant land in the Planning Area was estimated to be 104,479 acres.

3.5 New Jersey Highlands Preservation Area

As noted above, the DEP was tasked with developing stringent water and natural resource protection standards, policies and regulation that would be used to govern future development in the Highlands Preservation Area. The rules are quite complex, but generally provide exemptions for the construction of a single family home on a lot that existed at the time the Act was enacted in 2004. The ability to construct more than one residential unit on a subdivided parcel is however severely restricted and is very closely linked to having sufficient unconstrained vacant land available for construction of the proposed buildings.

With assistance from DEP and Highlands' staff, the Center developed an unconstrained vacant land spatial file

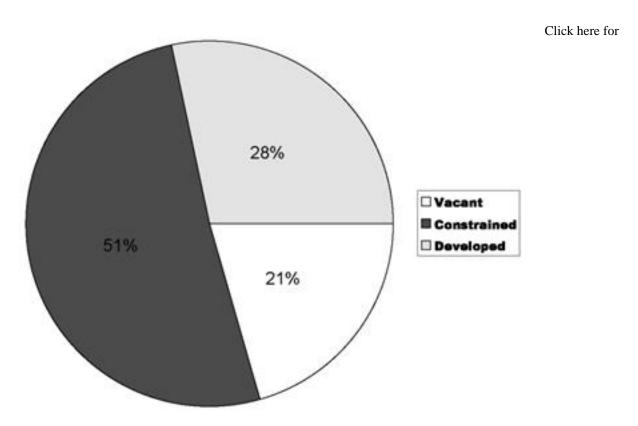
containing a total of *[6,630]* *14,707* acres. The initial process followed the Rest of State methodology described earlier. Next, the following spatial data was subtracted/removed to arrive at vacant available land in the Preservation Area:

- -- Slopes of 10 percent or greater (downloaded from Highlands web site)
- -- Open Space (downloaded from Highlands web site)
- -- Buffers on all Highlands Preservation Area waters including wetlands (downloaded from Highlands web site)
- -- National Heritage Priority sites for rare plant species and ecological communities (downloaded from DEP web site)
- -- DEP Landscape data (Corrected Version 3) for Ranks 2 through 5 (from DEP)

The Landscape data represents habitat for threatened and endangered species, ranks 2-5, consistent with DEP Highlands Preservation rules, and is in Draft form. A Final data set is expected to be made available to the public early in 2008.

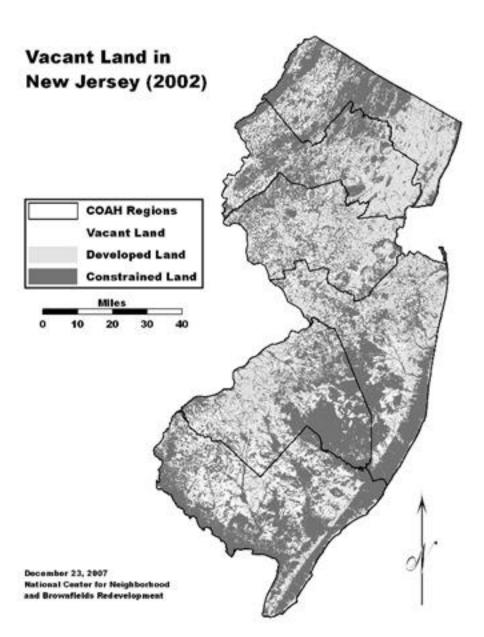
3.6 Vacant Land Results

Combining the data and results of these studies show that out of the State's approximate 4.98 million acre total area, about 1.42 million acres (28%) are already developed and 2.55 million acres (51%) are made up of water, wetlands, open space, parks, preserved farms, and other constrained lands. Approximately 1.01 million acres of vacant land are available for future residential and non-residential development.



image

Developed lands stretch from the northeast part of the state and the large New York metropolitan area, southward through Trenton to the Camden and Philadelphia metropolitan area. Large areas of constrained lands are located in the Highlands and Pinelands.



Click here for

image

A large proportion of the vacant land available for future development is thus located in less developed and lower density areas in the central areas of the state (COAH Regions 3 and 4), and even more so in the south (Regions 5 and 6):

-- Region 1--96,424 acres

- -- Region 2--101,673 acres
- -- Region 3--158,713 acres
- -- Region 4--*[179,902]* *168,594* acres
- -- Region 5--*[198,660]* *189,164* acres
- -- Region 6--*[277,320]* *298,124* acres

4.0 Land Capacity Analysis

Having identified and quantified the amount of vacant land in the State, the next step was to estimate the capacity of that land to support future residential and non-residential development. Capacity is defined as the maximum number of residential dwelling units and non-residential floor space that can be built on the available land, based on assumptions of how the land might be used in terms of type and density. These estimates will be used for three primary purposes:

- -- To determine if there is sufficient development capacity to support the State's projections of growth in households and employment out to at least the year 2018;
- -- To determine if there is sufficient vacant land and remaining development capacity in growth areas of the State as a whole and in each of the COAH Regions, to support the use of a growth-share methodology and growth-share ratios for distributing affordable housing needs; and,
- -- To provide an estimated upper ceiling or limit on the amount of household and employment growth that each of the 566 municipalities in the State will be able to absorb before it becomes fully developed.

One of the objectives of this analysis was to fully consider changes in land use policies and practices that have occurred since Round Two and which are currently being pursued by OSG and/or DEP. These include the goal of reducing future growth in State Planning Areas considered to be environmentally sensitive or better used for agricultural purposes, and seeking greater utilization of available lands in urban and suburban locations that have supporting infrastructure. The establishment of the Highlands Region and special designation of a Preservation Area, and the DEP's recently adopted Flood Hazard Area Control Act and pending Water Quality Management Rules underscore the importance of these efforts.

As before, the Center divided the State into five geographic or regional land use units in order to recognize differences in regulatory and policy land use constraints imposed by the three regional planning agencies versus other areas of the State, as well as the availability and use of data sources of differing quality and detail. Individual buildout models were then created for each, except the Meadowlands which was able to provide a more detailed analysis of its 224 acres based on individual parcel data and local zoning.

[page=6091] **4.1** Rest of State

A buildout model was created for the Rest of State that took into consideration variations in the type and size of communities, existing and future land uses, and development densities based on existing conditions, State Planning Area location and access to wastewater treatment systems.

4.1.1 Residential Density Matrix

The 1.01 million acres of vacant land in the state is made up of widely different types and size communities. Existing

residential and employment densities vary considerably from municipality to municipality, and region to region, and future growth will be impacted by the location of available lands in different State Planning Areas and access to wastewater treatment systems. To address these variations, the Center constructed a residential density matrix that divided the State into its six COAH Regions and each of these into five land use categories based on State Planning Area, sewer service area and community type.

- -- Type 1--Located in Planning Area 1 (Metropolitan) and classified as Urban by the Center for Urban Policy Research (CUPR).
- -- Type 2--Located in Planning Area 1 and classified as Suburban by CUPR.
- -- Type 3--All other communities located in Planning Area 1.
- -- Type 4--Located in Planning Area 2 (Suburban), a Designated Center or within a sewer service area.
- -- Type 5--All other communities (those located in Planning Areas 3, 4, 4b and 5 that are not within a sewer service area or listed as a Designated Center).

State Planning Area 1 represents areas of the state that have experienced the most intense development, and includes some of New Jersey's oldest and established population centers. But it also encompasses the largest urban cities like Newark, Elizabeth, Trenton and Camden, as well as many smaller suburban and more rural areas ranging from Englewood, Voorhees and Millburn to Phillipsburg, Bridgeton and Millville. Rather than lumping them all in one basket, the Center divided them into three groups according to their CUPR classifications. The fourth category encompasses lands located in Planning Area 2 and Designated Centers. These areas are less intensely developed, have more dispersed and fragmented patterns of development, and are more likely to have land available for development. The Center expanded this category to also include areas outside PA-1 and PA-2 that are within a sewer service area, and thus have the infrastructure to support additional growth. Together these four categories represent the State's potential growth areas.

The fifth category encompasses all other lands, and thus those areas that are constrained in their development capacity because they are generally dependent on having sufficient land to support on-site septic treatment systems.

Using the DEP's 2002 LU/LC data for residential developed land and 2000 U.S. Census household data at the Census Tract level, the Center calculated an estimated average residential density for each Census Tract. That data was then used to calculate a weighted average current residential density for each municipality. The latest spatial versions of the State Plan Policy Map and DEP sewer service area map were overlaid on the municipal spatial and density data, and each resulting data record was then assigned to one of the first four land use categories based on the above criteria. This data was then used to calculate a median residential density for each of these four categories of land use located within each of the six COAH Regions.

Land Use Category (DUs per Acre)

| COAH Region | 1 | 2 | 3 | 4 |
|-------------|-------|------|------|------|
| 1 | 19.19 | 6.28 | 1.99 | 1.35 |
| 2 | 15.53 | 4.75 | 2.33 | 2.27 |

| 3 | 13.84 | 5.52 | 1.89 | 1.69 |
|---|-------|------|------|------|
| 4 | 15.31 | 4.07 | 1.94 | 2.32 |
| 5 | 15.28 | 4.61 | 2.79 | 2.30 |
| 6 | 22.73 | 3.68 | 2.04 | 1.87 |

As expected, the median densities varied by geography (COAH Regions) and community type (categories 1-3 within PA-1). There was less difference between categories 3 and 4. A review of average land use densities in each of these 24 growth areas often showed large variances between the most and least densely developed areas. After conferring with COAH and the U Penn Team, the Center adopted a methodology that assumed that future development on each category of vacant land would occur at the higher of the municipality's current average density or the median density of residentially developed lands in similar municipalities within the same COAH Region. This is consistent with studies which show that densities are stabilizing or declining in areas that are already dense, and increasing in other areas as land values rise.

In addition, a caveat was added that no new development would occur at densities more than 25 percent higher than the municipality's current average density. This minimum requirement is consistent with an analysis of data from the American Housing Survey for the United States (AHS) from 1995 and 2001 that indicates that the median lot size for all residential units (both occupied and vacant) declined by 26 percent over this time period. Although the AHS data is not available at a state level, the U Penn team believes that the results are representative of land use and density trends in New Jersey.

All category 5 vacant lands (those located in Planning Areas 3, 4, 4b and 5 that are not within a sewer service area or listed as a Designated Center) are subject to DEP regulations related to the use of on-site (septic) wastewater treatment systems.

4.1.2 Non-Residential Densities

The amount of employment generated by commercial, industrial, retail and other non-residential properties varies widely across the state because of differences in floor area ratios (FARs) and the type and use of the building constructed. There is no Census Tract or other spatial data set that would provide an accurate estimation of current non-res space or associated densities at the municipal level that might be used to estimate future non-residential land capacity. Nor does the Center have access to municipal zoning and parcel level data.

After conferring with COAH, DEP and the U Penn Team, the Center adopted a methodology to generate a non-residential density for each municipality that is reflective of and a direct function of its residential density. Current and proposed State wastewater management (WWM) and water quality management (WQM) rules provide a mechanism and guidelines for equating residential housing units to non-residential floor area. The proposed WWM [page=6092] rule assumes that an average residential unit generates 500 gallons per day of wastewater effluent.

N.J.A.C. 7:9A recommends a default value for non-residential facilities located outside of a sewer service area of 0.125 gallons per day per square foot. Thus, 4,000 sq. ft. of non-residential space on build type 5 vacant land areas produces the same amount of wastewater effluent as an average house. N.J.A.C. 7:14A recommends a default value for

non-residential facilities located within a sewer service area of 0.100 gallons per day per square foot. Thus, 5,000 sq. ft. of non-residential space on build types 1-4 vacant land areas produces the same amount of wastewater effluent as an average house. This methodology of linking residential and non-residential densities through the use of wastewater flows is very similar to that used by the Pinelands Commission in its planning studies.

Using these conversion factors, an urban type community having a 20 DU per acre residential density would be given a 100,000 sq. ft. per acre non-residential density, or an FAR of about 2.3. A rural community having a residential density of 1 DU per 4 acres would have a non-residential density of 1,000 sq. ft. per acre.

These conversion factors were multiplied times the municipal residential density determined through the process described in Section 4.1.1 above, to determine the appropriate non-residential density for each vacant land area.

4.1.3 Land Use Mix

In 2002, approximately 67 percent of the developed land in the State was being used for residential housing purposes and 15 percent for commercial, industrial and retail space. However, the proportions used for these purposes varied widely across the state. About 22 percent of municipalities had 80 percent or more devoted to housing. Approximately one-fifth of municipalities had less than 8 percent being used for commercial purposes, while 10 percent had 30 percent of their developed lands used for this purposes. The Center has no information to show that individual municipalities are planning to significantly change these mixes in land use.

In 2002, approximately 14 percent of developed land was identified as being used for athletic fields, transportation/utility right of ways, military, transitional and other purposes. These uses varied widely as well. The assumption used in estimating the maximum buildout potential of the available lands will be that 10 percent will be used for non-residential and non-commercial purposes. This is less than the current average rate, and assumes that Military and several other land uses in this category will decline, remain static or not increase on average above the 10 percent estimate. The remaining 90 percent will be divided according to existing relationships between residential and commercial uses at the individual municipal level.

4.1.4 Minimum Parcel Size

The minimum lot (spatial polygon) size was computed by taking the reciprocal of its DU per acre density (5 DUs per acre requires minimum 0.20 acres of land). For non-residential land a default minimum parcel size of 1,500 sq. ft. (30 ft. X 50 ft.) was used, since the permitted density takes into consideration multiple story buildings. Those land areas not meeting the minimum criteria were coded no build (NB) and the model ignored them in its buildout calculations.

4.1.5 Pending Water Quality Management Act Rule Impact

The pending changes in the Water Quality Management Act (WQM) rules include the reassignment of wastewater management planning responsibility to the County Boards of Chosen Freeholders; withdrawal and re-designation of wastewater service areas where the applicable wastewater management plan (WMP) is not in compliance with the mandatory update schedule contained in the rules; a requirement that municipalities pass an ordinance designed to assure septic system maintenance; and a requirement that updated WMPs address septic density in a manner that demonstrates compliance with a 2 mg/L (ppm) nitrate planning standard.

N.J.A.C. 7:15-5.24(b) establishes criteria for delineating sewer service area boundaries using the presence of four environmental features to determine if centralized sewer service is inappropriate for an area: threatened and endangered species habitats, Natural Heritage Priority Sites, Category One stream buffers, and wetlands. "These four environmental features are unique and sensitive features whose protection is central to the Department's mandate to protect ecological integrity and water quality." <3> DEP identifies environmentally sensitive areas that are not appropriate for sewer

service area as any contiguous area of 25 or more acres that contains any combination or all of these four features. The appropriate wastewater management alternative for these areas is individual subsurface sewage disposal systems that discharge less than 2,000 gallons per day, typically thought of as septic systems. "Therefore, though excluded from the extension of sewer service, these areas have a wastewater management alternative that will promote a density of development consistent with the conservation of these resources." <3>

At COAH's request, the DEP provided the Center with its most current Landscape geospatial data layer. The Landscape data represents habitat for threatened and endangered species, ranks 2-5. It is in Draft form, and a Final data set is expected to be made available to the public in early 2008. The Center merged this spatial data with the wetlands, C-1 buffers, and the Natural Heritage Priority spatial layer (downloaded from DEP web site) which depicts critically important areas to conserve New Jersey's biological diversity, with particular emphasis on rare plant species and ecological communities. The Center then overlaid this combined environmental features spatial layer on the revised vacant land spatial data, and merged it with the DEP's current sewer service area (SSA) boundary data. All polygons containing 25 acres or more of vacant environmentally sensitive lands were removed from existing SSAs and reclassified as land use type 5 (development to be supported by septic treatment systems).

This process was applied to all areas of the state and resulted in the reclassification of 95,706 acres of vacant land from being supported by sewers to requiring septic systems. This reduced the residential capacity of these lands from 161,242 dwelling units to 69,328 DUs, a loss in capacity of 57 percent.

The pending Rule also revises the nitrate dilution factor from the current 5.2 mg/L to a level of 2.0 mg/L, which is the ambient nitrate quality in ground water, considering the State as a whole, for all areas except the Highlands Preservation Area. DEP used this limit to estimate the amount of land required for a typical house in different areas of the State. This calculation was based on a regional HUC 11-based application of the Department's GSR-32 groundwater recharge methodology, combined with the Trela-Douglas nitrate-dilution model. However, the Rule relaxes the definition of lands that can be used to provide sufficient onsite dilution to include wetlands, riparian buffers, open space and other optional environmental constraints. No buildings can be constructed on these lands, but they may be used in determining whether there is a sufficient undeveloped area for the required septic drainage field.

The Center estimates that the residential development capacity of the 617,155 acres of land currently located outside of sewer service areas will decline 61,330 dwelling units to a total of 108,055 units, a loss of 36 percent.

[page=6093] **4.1.6** Residential Buildout Results

The residential buildout was calculated for each polygon meeting the minimum residential parcel criteria, by multiplying its area in acres times the percent of residential land use associated with that municipality and the density (DUs per acre) assigned to that land use category. Results were rounded down to the nearest whole number before being combined with other results for the same build type in each municipality. A total of 620,214 new residential units could be constructed in areas outside of the three special regions.

4.1.7 Non-Residential Buildout Results

The non-residential buildout was computed for each polygon meeting the minimum non-residential parcel criteria, by multiplying its area in acres times the percent of non-residential land use associated with that municipality and the density (square feet per acre) assigned to that land use category. A total of approximately 890.6 million square feet of space could be constructed in areas outside of the three special regions.

4.2 New Jersey Meadowlands

The Meadowlands has only 224 acres of vacant buildable land split among a number of different type of parcels in the

District, due to the large areas made up of wetlands and marshes, landfills, and commercial, industrial and entertainment facilities. Because of the small area involved, the Center asked the Commission's Planning Division to provide the Center with a detailed buildout analysis based on local zoning and knowledge of what development was actually being considered for many of the parcels. That analysis estimates that 308 residential units and 8.0 million square feet of non-residential floor space will be created in a full development of these lands. The Commission also provided an analysis that indicates that the redevelopment of former landfills and underutilized commercial, industrial and entertainment properties have the potential to create as many as 5,775 new residential units and 12.0 million square feet of new floor space.

4.3 New Jersey Pinelands

A buildout model was created for the Pinelands that took into consideration variations in the type and size of communities, existing and future land uses, development densities based on the Pinelands Comprehensive Management Plan and Land Capability Map, and location vis-a-vis sewer service areas.

4.3.1 Residential Densities

The Pinelands Comprehensive Management Plan established nine land use management areas with goals, objectives, development intensities and permitted uses for each. The Center overlaid its Land Capability Map on the vacant land spatial file to identify available lands in five of the largest planning areas. The following recommended residential densities were then used to compute the residential buildout for each area:

- -- Preservation Area District--288,300 total acres: No residential development is permitted, except for one-1 acre lots in designated infill areas (total 2,072 acres). The Center allocated those 2,072 dwelling units across the municipalities within the Preservation District based on vacant land.
- -- Special Agricultural Production Area--40,300 total acres: Only residential farm-related housing is permitted at density of 1 DU per 40 acres.
- -- Forest Area--245,500 total acres: Only residential development is permitted at density of 1 DU per 28 acres.
- -- Agricultural Production Area--68,500 total acres: Farm related housing is permitted at density of 1 DU per 10 acres and non-farm related at 1 DU per 40 acres. Not knowing what proportion would be of each type in the future, the Center used the 1 DU per 28 acres density of the Forest Area for this area.
- -- Rural Development Area--112,500 total acres: Limited, low-density residential development is permitted at density of 1 DU per 5 acres.

In the Pinelands Villages, Towns and Regional Growth Area the Center used the 2002 LU/LC mix of residential versus non-residential land use to identify lands available for residential development. The average weighted residential density of each municipality was used to calculate buildout on these remaining lands, since the overall mission of the Pinelands Commission is to limit and not promote growth.

As with Rest of State, 10 percent of the vacant available land was set aside for athletic fields, transportation/utility right of ways, military, transitional and other purposes. Residential development was apportioned to the remaining lands as appropriate to the land use management area and described above.

4.3.2 Non-Residential Densities

The Pinelands Comprehensive Management Plan severely restricts where non-residential development can occur and in

some instances what type of non-residential uses are permitted. Limited in-fill non-residential development is permitted in the Preservation Area District, none is permitted in the Special Agricultural Production and Forest Areas, and agricultural commercial and roadside retail are generally permitted in the Agricultural Production and Rural Development Areas.

The Center did not have access to parcel level data with which to determine what infill lots exist in the Preservation Area District that would permit non-residential development, so only residential development was considered in the buildout. In the two planning areas where some non-residential development was permitted, the Center assumed that 10 percent of net vacant available lands (after 10 percent allocation to athletic fields, etc. noted above) would be used for this purpose and the remaining 90 percent would be used for residential development.

In the Pinelands Villages, Towns and Regional Growth Area the Center used the 2002 LU/LC mix of residential versus non-residential land use to identify net lands available for non-residential development. The average weighted residential density of each municipality was then multiplied by 4,000 square feet per DU if located outside a sewer service area and by 5,000 square feet if within an SSA, for purposes of calculating non-residential buildout on these remaining lands.

4.3.3 Minimum Parcel Size

The Center used the same minimum lot spatial polygon size criteria in the Pinelands as with Rest of State.

4.3.4 Buildout Results

The residential buildout was calculated for each polygon meeting the minimum residential parcel criteria, by multiplying its area in acres times the percent of residential land use and density (DUs per acre) associated with that land use management area or municipality. Results were rounded down to the nearest whole number before being combined with other results for the same type in each municipality. A total of 42,596 new residential units could be constructed in the Pinelands.

[page=6094] The non-residential buildout was computed for each polygon meeting the minimum non-residential parcel criteria, by multiplying its area in acres times the percent of non-residential land use and density (square feet per acre) associated with that land use management area or municipality. A total of approximately 37.7 million square feet of space could also be constructed in the Pinelands.

4.4 New Jersey Highlands Planning Area

As noted earlier, the Highlands Water Protection and Planning Act divided the Highlands Region into the Planning Area and the Preservation Area. With concurrence from DEP, the Highlands Council and COAH the Center also separated the two regional parts for purposes of determining the buildout capacity of their vacant and available land.

The 104,479 acres of vacant land located in the Highlands Planning Area is made up of widely different types and size communities, and some are located in both the Planning and Preservation Areas. Existing residential and employment densities vary considerably from municipality to municipality, and region to region, and future growth will be impacted by the location of available lands in different State Planning Areas, pending changes in the DEP's Water Quality Management Act Rules, and changes in land use and densities associated with the Highlands Regional Master Plan.

4.4.1 Use of Highlands Spatial Land Use Data

The Highlands Council issued a Regional Master Plan--Final Draft and supporting technical information on November 30, 2007, and has since held a number of public hearings. There was insufficient time to fully evaluate the RMP, and

much of the detailed buildout potential information was unavailable prior to the Center's completion of its vacant land and development capacity report to COAH of December 31st Over the ensuing months the Center, COAH and the Highlands staffs have met to discuss alternative approaches to balancing the environmental protection objectives of the RMP and COAH's responsibility to ensure that affordable housing is made available throughout the State. After consultation with COAH and consideration of the recent release of detailed spatial zoning and land use data for the Highlands Planning Area, it was decided that the Center would base its vacant land development capacity analysis on local zoning ordinances. These buildout results approximate the baseline or probable maximum capacity of lands within the Planning Area pursuant to the pending Highlands Regional Master Plan.

The use of local zoning and spatial data in the Highlands is consistent with the Center's use of a detailed parcel by parcel development analysis prepared for COAH by the Meadowlands and use of the Pinelands Comprehensive Management Plan and Land Capability Map to identify land uses and appropriate densities for estimating the development capacity within various areas of the Pinelands.

In addition, the Center removed environmentally sensitive lands from current sewer service areas and recomputed the development capacity of lands supported by septic systems within the Highlands Planning Area, pursuant to the DEP's pending WQMR and as was applied to other areas of the State. Municipalities in the Planning Area will be required to either implement the DEP's pending Rules or voluntarily conform to the Highlands RMP, both of which will result in the imposition of additional land use constraints and thus development capacity lower than the baseline discussed above.

4.4.2 Development Capacity and Affordable Housing Estimate

To determine the development capacity of the Highlands Planning Area the Center first applied the Planning Area spatial zoning data and supporting density look-up table to the Center's computation of vacant land. The model estimated that a total of 49,312 residential dwelling units and 207.1 million square feet of non-residential space could be constructed. The Center then used the same procedures as were used on the Pinelands and rest of state to identify and reclassify environmentally sensitive lands within existing sewer service areas to septic supported, and to recalculate the development potential of all lands that would be served by septic systems using DEP's proposed septic densities standards by HUC-11.

The final estimate of 37,509 residential dwelling units was considerably lower than the 75,359 dwelling units estimated previously by the Center using more macro- level, non-zoning data. However, the use of this local zoning and spatial land use data produced an estimated non-residential development capacity of 154.2 million square feet, which was considerably higher than the Center's previous estimate 82.2 million square feet of space for the Planning Area. The large differences in opposite directions between the two models appear to be related to: 1) much lower local zoning residential densities than current on-the-ground conditions; 2) much higher non-residential densities than would appear reasonable in areas located outside of existing sewer service areas; and 3) a higher proportion of land zoned for nonresidential purposes than residential compared to the current on-the-ground mix. Unless PEP and the Highlands relax their standards for determining the amount of land required to support a septic system, or PEP is willing to issue permits for the construction of numerous small wastewater treatment plants to meet the projected needs of such extensive non-residential development, local zoning will need to be changed to fit the constraints. The available options are residential use or far lower non-residential densities.

Applying COAH's 3rd Round Growth-Share ratios, the full development of vacant land under the Center's previous analysis generates a potential obligation to construct 24,079 affordable housing units, or about 32 percent of the 75,359 housing units that could be built. Applying the ratios to the results produced using local zoning land uses and densities the full development of vacant lands generates a potential obligation to construct 24,386 affordable housing units, which is virtually the same as produced by the Center's previous model. However, because of the much different mix between residential and non-residential land uses, local zoning will produce an affordable housing obligation that is equal to

about 65 percent of all housing that could be built.

4.5 New Jersey Highlands Preservation Area

The DEP was tasked with developing stringent water and natural resource protection standards, policies and regulation that would be used to govern future development in the Highlands Preservation Area. The rules are quite complex, but generally provide exemptions for the construction of a single family home on a lot that existed at the time the Act was enacted in 2004. The ability to construct more than one residential unit on a subdivided parcel is however severely restricted and is very closely linked to having sufficient unconstrained vacant land available for construction of the proposed buildings.

The Center created two buildout models for the Preservation Area to capture these differences. One for exempt parcels--those 25 acres or less in size--and a second for those greater than 25 acres in size. The 25 acre dividing point was chosen because it is the minimum parcel size (none of the land is forested) required for new development in the Preservation Area. The models both used parcel level data downloaded from the Highlands web site to identify and calculate the size of these parcels. No new non-residential construction is permitted except as redevelopment or expansion of existing non-residential building.

4.5.1 Exempt Parcels

Although the Preservation Area contains only 6,630 acres of vacant buildable land when all environmental constraints are taken into consideration, the Highlands Act provides exemptions that permit the construction of new single family homes on land that may not be vacant under this definition:

[page=6095]-- Construction of a single family dwelling for own use or family use: The construction of a single family dwelling, for an individual's own use or the use of an immediate family member, on a lot owned by the individual on the date of enactment of the Act or on a lot for which the individual has on or before May 17, 2004 entered into a binding contract of sale to purchase that lot; and

-- Construction of a single family dwelling on existing lot: The construction of a single family dwelling on a lot in existence on the date of enactment of the Act, provided that the construction does not result in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more.

A 25 acre parcel size was chosen as the dividing point between the exempt and non-exempt buildout models used in the buildout capacity of the Highlands Preservation Area, because it is the minimum parcel size (none of the land is forested) required for new development. In total there are 86,253 parcels of 25 acres or less in the Preservation Area, but most are already developed. The Center did not have access to MOD4 parcel data, which would have indicated ownership and development status of these parcels. In its place, a spatial approach was developed in consultation with DEP and Highlands staffs for identifying those parcels that were likely already developed, and thus identifying those where a new single family home could be built with one of these exemptions. The 2002 LU/LC spatial data for lands already developed (IDs 1 - 5 in Dictionary) was overlaid on the parcel data. Those which had developed lands equal to 15 percent of the parcel's total area or 1 acre (whichever was larger) were classified as already developed.

A total of 9,662 parcels of 25 acres or less was found to be undeveloped and therefore eligible for the above single family home exemptions. This is an estimate, because each proposed home must still meet stringent DEP water quality management requirements in order to be constructed on that parcel.

4.5.2 Non-Exempt Parcels

There are 1,768 parcels greater than 25 acres in size in the Preservation Area that encompass a total of 207,596 acres of

land. The rules that govern whether any of these parcels can be sub-divided into multiple eligible lots or at least be eligible for the above described single family home exemptions are very complex, and best addressed on a parcel by parcel basis. In order to simplify the requirements so that a buildout analysis could be prepared, the Center in consultation with DEP and Highlands staffs developed the following criteria for identifying developable parcels:

- -- Minimum lot size requirement: Under regulations established by DEP pursuant to the Highlands Act, the amount of land required to support each new dwelling unit on these larger parcels is a function of its forested and non-forested areas. The minimum housing lot size is calculated by multiplying the percent of total land that is forested by 88 acres and multiplying the balance times 25 acres, and then adding the two together. Thus, a parcel that is 50 percent forested requires a minimum housing lot size of 56.5 acres.
- -- Already fully developed: The Center did not have access to MOD4 parcel data, which would have indicated the development status of these parcels. In its place, the spatial approach for exempt parcels was used to identify those parcels that were already developed. If 4 percent or more of the parcel's total land area was developed then the entire parcel was categorized as fully developed. The actual DEP rule is 3 percent of impervious surface, but the Center used 4 percent to take into consideration the presence of grass and other non-impervious areas. It also provided a linkage to the rule for exempt parcels that the presence of 1 acre of development on a 25 acre parcel (4 percent) caused the entire parcel to be declared fully developed.
- -- Partially developed: The Center used the same process to identify those parcels that had one acre or more of developed land, but where the total did not reach or exceed 4 percent of the parcel's total area. The minimum housing lot size for each such parcel is first computed, and then the parcel is divided by that minimum. If it cannot be subdivided (parcel less than twice the minimum lot size) it is considered already fully developed since there is already an acre or more of existing development. If it can be subdivided, one lot is designated as already developed, and the remaining new lots constitute the maximum number of new homes that might be built.
- -- *No existing development:* The same process is used as with partially developed to determine how many lots can be created. The difference is that at least if it cannot be subdivided it is eligible for the single family house exemption.

To determine whether a parcel can be sub-divided into multiple eligible lots requires that each existing and potential lot first meet the minimum acreage requirement described above. A second test is then required to determine if there is sufficient vacant unconstrained land on which to actually build something. That is because the regulations do not permit the construction of a building or other major disturbance on the environmentally constrained lands. As an example: a 1,000 acre non-forested parcel could under the first test be subdivided into 40 - 25 acre lots. However, if the land is fully constrained due to endangered species habitat, etc., there is no vacant land available on the parcel to build a house, garage, etc. Previous studies have indicated that an average home in large lot areas covers a total of about one acre of land, thus each buildable lot must have at least an acre of vacant land on which the house can be built. Thus, the parcel in our example cannot be sub-divided. The Center was possibly more liberal in its interpretation of this requirement than might be feasible in terms of actual land use, since it allowed up to the maximum number of buildable lots to be designated if there was at least an acre of vacant land available for each. Still, the Center determined that only 1,382 new homes could be built on these 1,768 large parcels.

4.6 Land Capacity Results

Combining the results of these land capacity studies indicates that approximately 711,670 residential housing units and 1.09 billion square feet of non-residential space can be built on the State's vacant land, based on current and projected buildout densities:

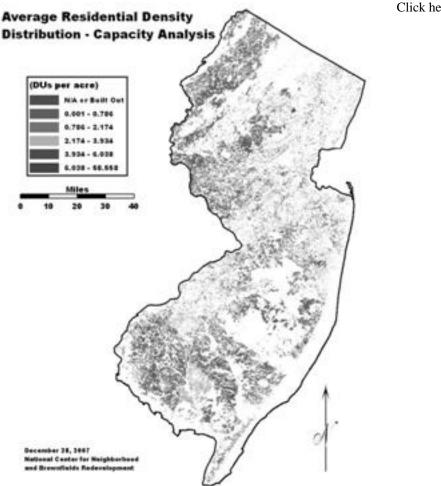
Residential Million Sq.

| Regional Area | Units | Ft. Space |
|--------------------------|---------|-----------|
| Meadowlands | 308 | 8.0 |
| Pinelands | 42,596 | 37.8 |
| Highlands - Planning | 37,509 | 154.2 |
| Highlands - Preservation | 11,044 | 0 |
| Rest of State | 620,214 | 890.7 |

These land capacity results are distributed among the six COAH Regions as follows:

| COAH Region | Residential Units | Million Sq. Ft. Space |
|-------------|-------------------|-----------------------|
| 1 | 88,505 | 173.5 |
| 2 | 84,524 | 222.2 |
| 3 | 114,858 | 200.1 |
| 4 | 134,789 | 136.8 |
| 5 | 145,566 | 193.4 |
| 6 | 143,428 | 164.6 |

As indicated on the map, new development will occur at low densities in the more rural areas of the state and at higher densities in those areas already having concentrations of development and thus the infrastructure need to support such growth.



Click here for

image

4.7 Potential Development Capacity Constraints

As noted earlier, the DEP has proposed changes to its Water Quality Management Planning (WQMP) Rules (N.J.A.C. 7:15). Numerous changes in definitions, planning agency and other sections of the current rules have the potential to affect where and how much development may be permitted in the future. This report includes an estimate of the impacts of potential changes in sewer service areas and use of much lower nitrate dilution targets for areas served by septic systems.

The Center did not use water and wastewater treatment capacity data to evaluate whether the vacant land capacity estimates in this report generate water demand that exceeds the capacity of the local provider or ground water resource, or effluent flows that exceed the treatment capacity of any sewer service area. Nor did it have any technical or other information that would allow it to determine whether such exceedances could be remedied by expansion of existing facilities and building of new plants.

Over the course of several meetings and discussions with senior NJ Department of Environmental Protection officials, they identified several wastewater treatment facilities that had current capacity constraints, others where expansion might be constrained in the future because of discharge stream conditions and others that would have little or no problem with future expansions. Efforts were described as being underway to resolve several of the largest current

capacity problems through repairs and improvements to old and damaged collection systems, upgrades and/or expansions of the sewage treatment plants themselves. These large investments will take several years to produce results, but when completed the facilities should be able to meet projected buildout demand.

Several other facilities could reach capacity over the near term if historical growth rates continue, and they will likely require costly upgrades in treatment technology, use of distributed treatment works, consideration of beneficial gray water reuse and other alternatives to meet long-term projected demand. Funds could be available through the New Jersey Environmental Infrastructure Trust, which has provided more than \$ 4.3 billion in low interest long-term loans over the past 20 years to fund drinking water, wastewater and storm water projects. For these reasons, a more in-depth analysis is needed to determine the most cost effective and environmentally sound wastewater management alternative to meet potential long-term buildout demand. A further assessment will then be required to determine whether those costs can be sustained by the existing and future users of those facilities, consistent with the notion of providing "affordable" housing. This assessment is required through the development and adoption of wastewater management plans under the pending WQMP Rules.

[page=6097] The pending WQMP Rule will require that each of the 21 counties in the state develop a comprehensive long-term wastewater and water management plan to replace the 190 plans now in use, the overwhelming majority of which are out of date. These plans will be required to address any inconsistencies between buildout demand versus treatment capacity and water availability. Ultimately, these plans will inform the vacant land and development capacity analysis prepared by COAH.

5.0 Redevelopment Potential

Many of the State's older urban and suburban communities have experienced redevelopment of former industrial and commercial sites into large residential, retail and mixed uses over the past 20 years. Former landfills in Elizabeth and Bayonne have been converted into a shopping center and golf course respectively; the Newark Bears and Trenton Thunder baseball stadiums have been built of former industrial sites; and former contaminated industrial areas along the Hudson River, in downtown Newark, Trenton and many other cities have been converted into dense residential housing mixed with some retail and commercial space. Often in conjunction with broader redevelopment of these areas, older and poor quality housing has been demolished and more dense market rate and affordable housing has been constructed in its place. Unfortunately, although these changes are visible to anyone traveling the State, no central database has been developed to provide information on how many acres have been redeveloped, for what uses and at what densities. The Center has attempted to fill this void with analyses of land use and residential density changes, and to thus estimate the amount of new housing that has been created through continuing redevelopment across the State in the recent past, and thus what might be reasonably expected to occur in the future.

5.1 Residential Redevelopment

An analysis was made of residential development between 1990 and 2000 and its impact on land use and residential densities at the municipal level as a method of estimating the amount of residential redevelopment that had occurred over this period. The Center identified 121 municipalities that had a weighted average residential density in 1990 of at least 2 DUs per acre and whose new construction density over the 1990-2000 time period was at least 50% higher. The new construction density was calculated by dividing the change in housing units reported by the U.S. Census over these 10 years, by the change in residential developed land over this period per a linear interpolation of the DEP LU/LC data for 1986 and 2002. These municipalities had an average 1990 density of 5.36 DUs per acre and an estimated new construction density of 13.23 - a rate about 2.5 times that of what existed in 1990.

The 121 municipalities were almost evenly distributed between the six COAH Regions, with Region 2 having the greatest participation (27.9% of its 104 municipalities) and Region 4 having the lowest (19.4% of its 98 municipalities). More than three-quarters of the communities were classified as Suburban, and there were more classified as Exurban or

Rural (total of 17) versus Urban (12).

A total of 60,988 housing units were constructed over this ten year period. If this construction had been at the 1990 municipal average residential densities, only 24,692 housing units would have been built. Thus, the inference is that redevelopment of existing housing units at higher densities produced the additional 36,296 units over this period. Continued redevelopment of older housing stock at such a rate would produce an average of 3,630 new units annually.

5.2 Non-Residential Land Redevelopment

A spatial analysis was made of changes in lands classified as non-residential developed (ID #2, Exhibit A - Data Directory) in the DEP's LU/LC data between 1986 and 2002 at the municipal level, together with changes in lands classified as residentially developed over this same period, as well as changes in total households from U.S. Census data in 1990 and 2000, to identify and estimate the amount of developed non-residential lands that had been converted to residential use. This analysis found 125 municipalities that had lost non-res developed lands over this 16 year period that could be reasonably traced to new residential development. A total of 4,202 acres were converted over this period, or an average of 262.6 acres per year. Although perhaps smaller than what many would expect given the redevelopment that has occurred along the Hudson River and other areas of the State, it is reflective of the long and sometime difficult process involved in cleaning up what are often contaminated (brownfield) sites. Proposed changes to soil and groundwater remediation standards in the State will make conversion of some of the better located sites to residential use more difficult, but this change in cost-benefit relationship should increase the value and opportunity for residential and mixed-use redevelopment of the hundreds of other former industrial and commercial sites located across the State.

Applying the average densities for each county determined in the residential redevelopment analysis to the conversion of non-residential lands estimated above, indicates that redevelopment of these lands would occur at an average rate of 13.2 DUs per acre. This estimate is at the lower end of the median densities of all urban type communities located in Planning Area 1, which range between 13.84 and 22.73, and well below the 25 DUs per acre density used by the Meadowlands in its Planned Residential zone. Redeveloping former industrial and commercial sites often requires demolition and removal of steel and concrete structures, as well as removing contaminates to residential standards. A pro-forma financial analysis prepared by Econsult indicates that a 25 percent increase in residential density is required to offset a 6 percent increase in construction costs and that a 15 percent increase would be needed to offset a 4 percent cost increase. Given these different considerations, the Center assumed that non-residential land redevelopment would occur at densities 15 percent higher than the average estimated residential redevelopment density of each county, as determined in the above referenced study (an average of 15.2 DUs per acre). This will generate about 3,996 new residential units annually.

An analysis prepared by Econsult found that this level of estimated non-residential redevelopment would have accounted for an average of about 14.7 percent of all residential housing growth that occurred between 1993 and 2002, and is a reasonably good estimate of future housing capacity associated with redevelopment.

5.3 Redevelopment Summary

This historical based rate of redevelopment is expected to increase in future years, as the combination of smart growth incentives and environmental constraints shift growth away from rural areas and toward the state's urban and suburban areas that have critical transportation, water, wastewater and other infrastructure assets. In-fill development in these areas will quickly consume any remaining vacant land and increase the value of land occupied by former or underutilized industrial and commercial sites located in residential areas. Demand for additional housing will also result in many older single and multi-family housing units being demolished and replaced with more dense townhouses and mixed use condo developments. Redevelopment of older housing stock at higher densities and the redevelopment of former industrial and commercial lands could become the major source of housing for many of the state's older communities. Redevelopment could thus provide a significant proportion of the state's residential housing units needed

in the future.

[page=6098] 6.0 Growth Area Capacity

The State Development and Redevelopment Plan divides the State into planning areas that share common conditions with regard to development and environmental features, and refers to Metropolitan (PA-1), Suburban (PA-2) and Designated Centers as Areas for Growth. The Center believes that growth can also be supported on other lands that are located within a sewer service area. Development will also occur at much lower densities outside both of these areas, in more rural and environmentally sensitive areas that must be served by on-site septic treatment systems. The following is a breakout of the vacant land and capacity results for growth areas and those that will require septic treatment systems, by COAH Region.

| COAH | Vacant | Pct. of | Residential | Pct. of | Square | Pct. of |
|--------|---------|---------|-------------|---------|---------|---------|
| Region | Land | Total | Housing | Total | Feet | Total |
| | (acres) | COAH | Units | COAH | Space | COAH |
| | | Region | | Region | (000s) | Region |
| 1 | 19,704 | 20.4 | 53,802 | 60.8 | 158,095 | 91.1 |
| | | | | | | |
| 2 | 36,216 | 35.6 | 62,964 | 74.5 | 191,735 | 86.3 |
| | | | | | | |
| 3 | 46,953 | 29.6 | 93,324 | 81.3 | 176,600 | 88.2 |
| | | | | | | |
| 4 | 64,272 | 35.7 | 112,879 | 83.7 | 124,593 | 91.1 |
| | | | | | | |
| 5 | 56,597 | 28.5 | 118,999 | 81.7 | 172,495 | 89.2 |
| 6 | 69.457 | 25.0 | 81,276 | 56.7 | 406,297 | 64.6 |
| Total | 293,200 | 29.0 | 523,244 | 73.5 | 929,815 | 85.3 |
| 101111 | 233,200 | 29.0 | 323,244 | 75.5 | 949,013 | 05.5 |

Areas Served by Septic Systems:

| COAH | Vacant | Pct. of | Residential | Pct. of | Square | Pct. of |
|--------|---------|---------|-------------|---------|--------|---------|
| Region | Land | Total | Housing | Total | Feet | Total |
| | (acres) | COAH | Units | COAH | Space | COAH |
| | | Region | | Region | (000s) | Region |
| 1 | 76,720 | 79.6 | 34,703 | 39.2 | 15,423 | 8.9 |
| 2 | 65,457 | 64.4 | 21,560 | 25.5 | 30,463 | 13.7 |
| 3 | 111,760 | 70.4 | 21,534 | 18.7 | 23,524 | 11.8 |

| 4 | 115,630 | 64.3 | 21,910 | 16.3 | 12,228 | 8.9 |
|--------|---------|------|---------|------|---------|------|
| 5 | 142,063 | 71.5 | 26,567 | 18.3 | 20,859 | 10.8 |
| 6 | 207,863 | 75.0 | 62,152 | 43.3 | 58,290 | 35.4 |
| Totals | 719,492 | 71.0 | 188,426 | 26.5 | 160,787 | 14.7 |

Although the growth areas contain only 29.0 percent of the State's vacant lands, these lands, because of their location and access to centralized wastewater treatment systems have the capacity to support 73.5 percent of the total residential housing that could be built and 85.3 percent of all non-residential floor area space in the State.

7.0 Conclusions

As noted in the Introduction, this analysis of vacant land in New Jersey and its capacity to support future growth was to be used for three primary purposes:

- -- To determine if there is sufficient vacant land and remaining development capacity to support the State's projections of growth in households and employment out to at least the year 2018;
- -- To determine if there is sufficient vacant land and remaining development capacity in growth areas of the State as a whole and in each of the COAH Regions, to support the use of a growth-share methodology and growth-share ratios for distributing affordable housing needs; and,
- -- To provide an estimated upper ceiling or limit on the amount of household and employment growth that each of the 566 municipalities in the State will be able to absorb before it becomes fully developed.

The Center believes that each of these objectives has been achieved.

Of the State's approximate 4.98 million acre total area, about 1.01 million acres are undeveloped and unconstrained and thus available for future development. This estimate is much lower than those discussed previously by state planning officials, and reflects the recent establishment of the New Jersey Highlands and other initiatives intended to reduce the adverse environmental impacts of development on critical water and other natural resources in many areas of the State. However, it is important to put this estimate into the context of the State's land uses over time. All of the growth and development that has occurred in the 240 years since our nation was founded has only used 1.42 million acres or 28 percent of the state's total area. Remaining vacant lands have a capacity to provide an additional 711,670 residential housing units, or about 2.5 times the projected growth of 280,397 new housing that would need to be constructed between 2004 and 2018. Even if no development were permitted on lands outside of a sewer service area, the 292,975 acres of vacant land within the State's growth areas have a residential development capacity that is 1.9 times this projected housing need.

The redevelopment of former commercial and industrial lands for mixed use and residential purposes, and the redevelopment of existing older and lower quality housing stock into new more dense townhouses and condo buildings,

has created an estimated 7,626 additional new housing units per year in recent years. The conversion of non-residential lands to mixed use and residential uses, by itself, appears to have accounted for an average of 14.7 percent of the state's housing growth between 1993 and 2002. Redevelopment could thus provide a significant proportion of the state's estimated residential housing needs over the 2004-2018 time frame associated with the 3rd Round Rules and substantially reduce the need for new construction on currently vacant land.

[page=6099] Taken together, there is clearly sufficient vacant land, future development capacity and redevelopment potential to support the State's projected growth in population, households and employment well beyond 2018.

-- As described in Section 6, and further noted above, only 29 percent of the State's vacant lands are located in State Planning Areas 1 or 2, a Designated Center or other areas having access to centralized wastewater treatment systems (collectively referred to as Growth Areas). However, these locations have transportation, education, water, wastewater and other critical infrastructure assets, as well as cultural, higher education, shopping and other amenities that will attract and support considerable additional growth. The Center's analysis indicates that together these Growth Areas have the capacity to support 73.5 percent of the total residential housing that could be built in the State and 85.3 percent of all non-residential floor area space. An examination of the results for each of the six COAH Regions indicates that no less than 56.7 percent of the housing capacity and 64.6 percent of the non-residential floor space capacity is located within the Growth Area of that Region. In half the Regions about 81-84 percent of the housing capacity and 89-91 percent of the non-residential floor space capacity is located within its Growth Area.

The redevelopment of former industrial, commercial and municipal landfill sites into mixed use and residential complexes has largely been occurring in New Jersey's older urban and suburban ("Growth") areas, and will thus provide additional capacity to meet a significant proportion of the state's residential housing units needed in the future.

The magnitude of these results clearly indicate that there is sufficient vacant land and remaining development and redevelopment capacity in growth areas of the State as a whole and in each of the COAH Regions, to support the use of a growth-share methodology and growth-share ratios for distributing affordable housing needs.

| <1> Division of Land Use Regulation, Flood Hazard Area Pro | gram |
|--|------|
| www.state.nj.us/dep/landuse/se.html | |

<2> Ibid.

<3> N.J.A.C. 7:15-5.24 Delineation of sewer service areas

Exhibit A

Anderson Land Use/Land Cover Data Dictionary

Developed Land ID

#

1 Residential LU2002_ Label_02 code

| | 1110 | RESIDENTIAL, HIGH DENSITY, MULTIPLE DWELLING |
|---------------------------|-----------------|--|
| | 1120 | RESIDENTIAL, SINGLE UNIT, MEDIUM DENSITY |
| | 1130 | RESIDENTIAL, SINGLE UNIT, LOW DENSITY |
| | 1140 | RESIDENTIAL, RURAL, SINGLE UNIT |
| | 1100 | RESIDENTIAL |
| | 1150 | MIXED RESIDENTIAL |
| | | |
| 2 Non-Residential | LU2002_ code | Label_02 |
| | 1200 | COMMERCIAL/SERVICES |
| | 1300 | INDUSTRIAL |
| | 1500 | INDUSTRIAL/COMMERCIAL COMPLEXES |
| | 1600 | MIXED URBAN OR BUILT-UP LAND |
| | 7300 | EXTRACTIVE MINING |
| | | |
| 3 Other - Military | LU2002_ code | Label_02 |
| | 1211 | MILITARY RESERVATIONS |
| 4 Other - Transitional | LU2002_ code | Label_02 |

| | 7500 | TRANSITIONAL AREAS |
|----------------|-----------------|--|
| | 7400 | ALTERED LANDS |
| | 7430 | DISTURBED WETLANDS (MODIFIED) |
| 5 Other - Plat | LU2002_ code | Label_02 |
| | 1400 | TRANSPORTATION/COMMUNICATIONS/UTILITIES |
| | 1410 | MAJOR ROADS |
| | 1419 | BRIDGE OVER WATER |
| | 1440 | AIRPORT FACILITIES |
| | 1461 | WETLAND RIGHTS-OF-WAY (MODIFIED) |
| | 1462 | UPLAND ROW (undeveloped) |
| | 1463 | UPLAND ROW (undeveloped) |
| | 1499 | STORM WATER BASIN |
| | 1701 | OTHER URBAN OR BUILT-UP LAND (developed) |
| | 1710 | CEMETARY |
| | 1711 | CEMETRAY ON A WETLAND |
| | 1800 | RECREATIONAL LAND |
| | 1804 | ATHLETIC FIELDS (SCHOOLS) |

1810

STADIUMS, CULTURAL CENTERS & ZOOS

| | 1850 | MANAGED WETLAND IN BUILT-UP MAINTAINED REC AREA |
|---------------------------------|-----------------|---|
| Undeveloped Land - Available | | NOTE: The code "1701" was assigned by NCNBR and is not a standard Anderson LULC code. Richard Grabowski of the NJDEP used 2002 aerial imagery to identify lands in the "1700" category that should be considered developed. These developed "1700" lands have been given the new designation "1701" |
| 6 Undeveloped-Other | LU2002_ code | Label_02 |
| | code | |
| | 1700 | OTHER URBAN OR BUILT-UP LAND (undeveloped - see Note above) |
| | 1741 | PHRAGMITES DOMINATED URBAN AREA |
| | 7600 | UNDIFFERENTIATED BARREN LANDS |
| | 1214 | FORMER MILITARY; INDETERMINATE USE |
| 7 Undeveloped-Agriculture | LU2002_ code | Label_02 |
| | 2100 | CROPLAND AND PASTURELAND |
| | 2200 | ORCHARDS/VINEYARDS/NURSERIES/HORTICULTURAL AREAS |
| | 2300 | CONFINED FEEDING OPERATIONS |

| | 2400 | OTHER AGRICULTURE |
|----------------------|-----------------|---|
| | 2260 | CRANBERRY FARMS |
| 8 Undeveloped-Forest | LU2002_ code | Label_02 |
| | 4110 | DECIDUOUS FOREST (10-50% CROWN CLOSURE) |
| | 4120 | DECIDUOUS FOREST (>50% CROWN CLOSURE) |
| | 4210 | CONIFEROUS FOREST (10-50% CROWN CLOSURE) |
| | 4220 | CONIFEROUS FOREST (>50% CROWN CLOSURE) |
| | 4230 | PLANTATION |
| | 4311 | MIXED FOREST (>50% CONIFEROUS WITH 10%-50% CROWN CLOSURE) |
| | 4312 | MIXED FOREST (>50% CONIFEROUS WITH >50% CROWN CLOSURE) |
| | 4321 | MIXED FOREST (>50% DECIDUOUS WITH 10-50% CROWN CLOSURE) |
| | 4322 | MIXED FOREST (>50% DECIDUOUS WITH >50% CROWN CLOSURE) |
| | 4410 | OLD FIELD (< 25% BRUSH COVERED) |
| | 4411 | PHRAGMITES DOMINATED OLD FIELD |
| | 4420 | DECIDUOUS BRUSH/SHRUBLAND |

| | 4430 | CONIFEROUS BRUSH/SHRUBLAND |
|------------------------|------------------------------|--|
| | 4440 | MIXED DECIDUOUS/CONIFEROUS BRUSH/SHRUBLAND |
| | 4100 | DECIDUOUS FOREST |
| | 4200 | CONIFEROUS FOREST |
| | 4310 | MIXED WITH CONIFEROUS PREVALENT (> 50% Coniferous) |
| | 4320 | MIXED WITH DECIDUOUS PREVALENT (> 50% Deciduous) |
| | 4400 | BRUSH/SHRUBLAND |
| | 4500 | SEVERE BURNED UPLAND FOREST |
| | | |
| 9 Undeveloped-Wetlands | LU2002_ code | Label_02 |
| 9 Undeveloped-Wetlands | | Label_02 MANAGED WETLAND IN MAINTAINED LAWN GREENSPACE |
| 9 Undeveloped-Wetlands | code | MANAGED WETLAND IN MAINTAINED LAWN |
| 9 Undeveloped-Wetlands | code 1750 | MANAGED WETLAND IN MAINTAINED LAWN GREENSPACE |
| 9 Undeveloped-Wetlands | code 1750 2140 | MANAGED WETLAND IN MAINTAINED LAWN GREENSPACE AGRICULTURAL WETLANDS (MODIFIED) FORMER AGRICULTURAL WETLAND-BECOMING |
| 9 Undeveloped-Wetlands | code 1750 2140 2150 | MANAGED WETLAND IN MAINTAINED LAWN GREENSPACE AGRICULTURAL WETLANDS (MODIFIED) FORMER AGRICULTURAL WETLAND-BECOMING SHRUBBY, NOT BUILT-UP) |

| | 6232 | CONIFEROUS SCRUB/SHRUB WETLANDS |
|--|----------------------------|---|
| | 6233 | MIXED SCRUB/SHRUB WETLANDS (DECIDUOUS DOM.) |
| | 6234 | MIXED BRUSH AND BOG WETLANDS, CONIFEROUS DOMINATE |
| | 6240 | HERBACEOUS WETLANDS |
| | 6241 | PHRAGMITES DOMINATED INTERIOR WETLAND |
| | 6251 | MIXED FORESTED WETLANDS (DECIDUOUS DOM.) |
| | 6252 | MIXED FORESTED WETLANDS (CONIFEROUS DOM.) |
| | 6500 | SEVERE BURNED WETLANDS |
| | 8000 | MANAGED WETLANDS (Modified) |
| | | |
| | 6221 | ATLANTIC WHITE CEDAR WETLANDS |
| | 6221 | ATLANTIC WHITE CEDAR WETLANDS |
| Undeveloped Land - Unavailable | 6221 | ATLANTIC WHITE CEDAR WETLANDS |
| Undeveloped Land - Unavailable 10 Undeveloped- Unavailable Wetlands | 6221 LU2002_ code | ATLANTIC WHITE CEDAR WETLANDS Label_02 |
| Unavailable 10 Undeveloped- | LU2002_ | |
| Unavailable 10 Undeveloped- | LU2002_ code | Label_02 |
| Unavailable 10 Undeveloped- | LU2002_ code 6110 | Label_02 SALINE MARSHES |
| Unavailable 10 Undeveloped- | LU2002_ code 6110 6111 | Label_02 SALINE MARSHES SALINE MARSH (low marsh) |
| Unavailable 10 Undeveloped- | LU2002_code 6110 6111 6112 | Label_02 SALINE MARSHES SALINE MARSH (low marsh) SALINE MARSH (high marsh) |

| | 7100 | BEACHES |
|--------------------------------------|-----------------|--|
| | 7200 | EXPOSED ROCK |
| 11 Undeveloped- Unavailable Water | LU2002_ code | Label_02 |
| | 5410 | TIDAL RIVERS, INLAND BAYS AND OTHER TIDAL WATERS |
| | 5411 | OPEN TIDAL BAYS |
| | 5420 | DREDGED LAGOON |
| | 5430 | ATLANTIC OCEAN |
| | 5100 | STREAMS AND CANALS |
| | 5200 | NATURAL LAKES |
| | 5300 | ARTIFICIAL LAKES |

Exhibit B Spatial Data List

NJDEP 2002 LU/LC by WMA--WMA 1-20

-w01lu02.shp . . . w20lu02.shp

The NJDEP's Land Use Land Cover data is acting as the main base layer from which areas deemed not to be available for future development will be removed. These include the LU/LC categories Developed Land, Undeveloped-Unavailable Land, and Undeveloped Wetlands listed in Exhibit A.

NJDEP 2002 LU/LC Code 1700 Update

-BaseLayer.gdb

This update identifies areas such as roads and other high percent impervious surface areas within the 1700 Other Urban classification, which will be reclassified as already developed.

State Plan 3

-splan3.shp

The NJ State Plan 3 is the most recent version of the State Plan Policy Map. It contains the legislative boundaries of the Pinelands and Meadowlands, which will be subtracted from the LU/LC base layer and addressed separately. It will also be used in the analysis and the application of buildout densities appropriate to different types of land use across the state.

Highlands Region Boundary

-HighlandsRegion.shp

The Highlands Region Boundary file will be used to define the area to be subtracted from the LU/LC base layer. The Highlands Region will be addressed separately.

Open07--2007 Open Space File

-open07.shp

This file contains the most current data on public open space, parks, etc. These areas will be subtracted from the LU/LC base layer.

Non Profit Open Space--Private Open Space

-np_polygon.shp

-npe_polygon.shp

This data set shows areas classified as privately owned open space, and will also be subtracted from the LU/LC base layer.

Surface Water Quality Standards

-swqs.shp

The NJDEP's Surface Water Quality Standards data will be used to extract C1 streams. The Center will calculate and insert a 300 foot buffer on each side of these streams, and subtract these areas from the LU/LC base layer.

New Jersey Farmland Preservation Program

-njfpp.shp

The New Jersey Farmland Preservation Program data will be used to identify farmland that is currently protected by the program, and therefore is not available for development. These areas will be subtracted from the LU/LC base layer.

40 N.J.R. 5965(a)

Highlands Open Waters Protection Area (Draft)

- Highlands Open Waters Protection Area Draft. shp

This layer was used exclusively as an additional land constraint in the Highlands region. It removes a 300 foot buffered area from around all streams, rivers, lakes and wetlands in the Highlands, as identified by the New Jersey Highlands Council.

Slope Greater Than 10 Percent

-g_10percent_m.shp

This layer was used exclusively as an additional land constraint in the Highlands Preservation Area. It removes undeveloped slopes greater than 10 percent in the Highlands, as identified by the New Jersey Highlands Council.

Slope Greater Than 15 Percent, Undeveloped (Draft)

-SlopeGreaterThan15PercentUndevelopedDraft.shp

This layer was used exclusively as an additional land constraint in the Highlands Planning Area. It removes undeveloped slopes greater than 15 percent in the Highlands, as identified by the New Jersey Highlands Council.

Highlands Open Space

-openspace.shp

This layer was downloaded from New Jersey Highlands Council web site. This layer represents open space within the NJ Highlands Region and is a compilation of many different data sources that include federal, county, local, and non-profit groups.

Pinelands Management Areas

PinelandsMgmtAreas.shp

This layer was obtained from the New Jersey Pinelands Commission. It outlines the Boundaries of the Management Areas defined by the Commission and is used to set buildout densities in the Pinelands region.

Sewer Service Area

-statessa.shp

This layer outlines the NJDEP-defined boundaries of sewer service areas in the state. This layer is used to define buildout densities ("Build Type") in all models outside the Highlands Preservation Area.

[page=6104] Center boundaries of the NJ State Development and Redevelopment Plan

-cenlne2.shp

This layer was obtained from the NJDCA's Office of Smart Growth. It outlines the boundaries of designated and proposed Growth Centers of New Jersey. Only designated centers are used to define buildout densities in all models

40 N.J.R. 5965(a)

outside the Highlands Preservation Area.

DEP Landscape data for Ranks 2 through 5

-LandscapeV3-Ranks2345-PresArea-DIS.shp

This layer represents areas where special protection is given to rare and endangered species and was provided by the NJDEP on CD. These areas are removed from the available land in the Highlands Preservation Area.

National Heritage Priority sites

-prisites.shp

This layer outlines the NJDEP-defined areas where protection is given to rare natural communities. These areas are removed from the available land in the Highlands Preservation Area.

Bedrock Geology of New Jersey

-geology.shp

This layer was downloaded from New Jersey Geological Survey. This layer consists of statewide and countywide data layers (contacts, faults, folds, dikes). The GIS data were scanned and digitized from United States Geological Survey Miscellaneous Investigations and Open-File Series 1:100,000 scale geologic maps compiled from 1984 to 1993.

New Jersey FEMA Floodplain Update (Draft)

-njfema.shp

This layer was provided by New Jersey Department of Environmental Protection. This layer contains the latest information of FEMA Map Modernization Program for Bergen, Camden, Essex, Hudson, Ocean, Passaic, Somerset, and Union Counties.

Surface Water Quality Standards: 300' Buffers (Draft)

-swqs300.shp

This layer was provided by New Jersey Department of Environmental Protection. The layer was used to identify streams requiring 300 feet buffers around its riparian zone.

Surface Water Quality Standards: 150' Buffers (Draft)

-swqs150.shp

This layer was provided by New Jersey Department of Environmental Protection. The layer was used to identify streams requiring 150 feet buffers around its riparian zone.

Surface Water Quality Standards: 50' Buffers (Draft)

-swqs50.shp

This layer was provided by New Jersey Department of Environmental Protection. The layer was used to identify streams requiring 50 feet buffers around its riparian zone.

| Exhibit C COAH Regions - Counties | | |
|-----------------------------------|-----------------|--|
| COAH Regions Counties REGION 1 | REGION 4 | |
| Bergen | Mercer | |
| Hudson | Monmouth | |
| Passaic | Ocean | |
| Sussex | | |
| REGION 2 | REGION 5 | |
| Essex | Burlington | |
| Morris | Camden | |
| Union | Gloucester | |
| Warren | | |
| REGION 3 | REGION 6 | |
| Hunterdon | Atlantic | |
| Middlesex | Cape May | |
| Somerset | Cumberland | |

Salem

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING TASK 1 -- ALLOCATING GROWTH TO MUNICIPALITIES

Submitted To: New Jersey Council on Affordable Housing 101 South Broad Street Trenton NJ 08625

Submitted By: Econsult Corporation 3600 Market Street 6th Floor Philadelphia PA 19104

May 1, 2008

TABLE OF CONTENTS

- 1.0 Introduction
- 1.1 Overview

| 1.2 | Projection Horizon, Major Estimation Years and Historical Growth Trends |
|-------|--|
| 1.3 | Data Sources |
| 1.3.1 | NJLWD County Projections |
| 1.3.2 | NJLWD Historical Estimates |
| 1.3.3 | NCNBR Growth Capacity Analysis |
| 1.3.4 | U.S. Census, American Community Survey, and Public Use Micro Sample Data |
| 2.0 | Overview of the Allocation Model |
| 3.0 | Housing Allocation Model |
| 3.1 | Scope |
| 3.2 | Procedure |
| 3.3 | Results |
| 4.0 | Employment Model |
| 4.1 | Scope |
| 4.1.1 | Unit of Analysis |
| 4.1.2 | Converting Floor Space to Employment |

- 4.2 Procedure
- 4.3 Results

5.0 State Government Employment

Appendix A - Municipal Growth Rates in the Housing Allocation Model

Appendix B - Municipal Growth Rates in the Employment Allocation Model

[page=6108] 1.0 INTRODUCTION

1.1 Overview

In January 2007, the Appellate Division overturned portions of COAH's Round 3 growth share methodology and requested additional analysis to support the use of a growth share approach. The Court also directed COAH to determine how much vacant land is available in growth areas of the state.

The Court's request framed the work in Task 1 of the project undertaken by the Econsult Corporation and the Rutgers' National Center for Neighborhood & Brownfields Redevelopment (NCNBR). Specifically, Econsult's part of Task 1 is to provide municipality level 2018 projections of housing units and employment, and the implied net changes between 2004 and 2018. These projection results and the inputs from other Tasks will form the base data for COAH to determine the statewide affordable housing obligations.

The New Jersey Department of Labor and Workforce Development (NJLWD) currently makes projections of population and employment for each county in the state at various projection years. Task 1 provides a method for allocating county projections among the municipalities in each county for the year 2018. The method provides estimates of 2018 housing units and employment for each municipality consistent with the NJLWD population projections. It should be noted that projections are neither predictions nor forecasts. The NJLWD, in its discussion its county projections, provides a good perspective on the nature of projections stating that projections

. . . reflect identifiable long-term economic and demographic trends which have been implicitly or explicitly incorporated into the models. In other words, the projections are an extrapolation of past and current trends into the future. These projections do not take into account any current or future policy initiatives. They are not intended to constrain or to advocate specific levels of growth in the state. These projections are best used as a reference framework for planning, research, and program evaluation.

1.2 Projection Horizon, Major Estimation Years and Historical Growth Trends

The projection horizon for Task 1 is 2018. While the original Round 3 regulations covered the period through 2014, the projection period for this revision of Round 3 regulations has been extended to 2018 so that the period could reflect an entire housing cycle. Because housing prices and production vary over long periods of time with rapid growth in some periods and slow growth in others, the research team determined that the period should be extended so that that the

projection would reflect both strong and weak times in the housing market. Given the very strong housing market in New Jersey until recently, it is likely that a projection period that stopped in 2014 would have disproportionately captured a relatively slow part of the housing cycle, given the proposed rules focus on the period 2004-2018.

Although the projection period focuses on 2004-2018, the base year for the analysis is 2002, which is the latest year for which all necessary data are available for the required vacant land analysis performed by NCNBR. Data are extrapolated to 2004 to reflect the beginning of the period of growth that will be used by COAH to measure affordable housing obligations. Thus, the operating projection period in Task 1 is from 2002 to 2018. For consistency, the current Round 3 COAH rules use employment projections for the same period. To be consistent with the revised time frame for Round 3 COAH, housing and employment figures are reported for each municipality for the following years: 2002, 2004, and 2018.

NJLWD county projections are allocated to the municipal level based on historical trends for each municipality and the extent to which each municipality approaches its physical growth capacity. We measure actual municipal growth in the nine years prior to 2002. The beginning of the nine-year period in 1993 is the earliest year for which NJLWD provides employment data at the municipality level. To be consistent with the employment allocation model, the housing unit model also adopts 1993 as the beginning year for measuring municipal growth rates for housing.

1.3 Data Sources

The primary data used in the allocation model provided include: data available from the NJLWD, land capacity estimates provided by NCNBR, and data from the U.S. Census Bureau's 1990 and 2000 Census. These data include historical figures on population and employment at the municipal level and future projections at the county level. Data from post 2002 American Community Survey (ACS) is also used for gauging trends and various ratio analyses at the county level.

1.3.1 NJLWD County Projections

In May 2007, COAH, the University of Pennsylvania research team, and Econsult agreed to use county projections of population and employment provided by NJLWD in the Task 1 allocation models. These projections are the control totals for each county; that is, estimates of for each municipality are forced to sum to the population and employment data for that county. These restrictions ensure that municipal estimates will be consistent with county projections.

While other projections exist, most notably Metropolitan Planning Organization (MPO) projections, the population and employment projections provided by the NJLWD were chosen to provide the county control totals for population and employment for several reasons. First, there is a common methodology for forecasting population and employment for all New Jersey Counties. Methodological and data consistency is the primary concern in choosing a set of projection data that applied uniformly across the state. Since the NJLWD projection models have built-in connection of population and economic changes, the projection method is not only consistent across geography but across sectors.

Prepared separately by three different MPOs, the county projections from MPOs do not add up to an agreeable state total. Since the South Jersey Transportation Planning Organization (SJTPO) does not report its projection methodology in its website, we cannot evaluate it in details. The county population projection models used by Delaware Valley Regional Planning Commission (DVRPC) and the North Jersey Transportation Planning Authority (NJTPA) are similar in terms of using countywide and region-wide cohort survival techniques, but their county employment models differ significantly. DVRPC uses an employment-to-population/household method while NJTPA uses the NJLWD, the New York Metropolitan Transportation Council (NYMTC) and a regional shift-share method to estimate the county employment range. NJLWD projections, on the other hand do not have such methodological inconsistencies.

The NJLWD approach provides a consistent methodology in its projection of county population and employment by

industry (work place based). It is reported in http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi03/method.pdf.

NJLWD developed and compared the merit of four projections models:

[page=6109]

- -- Economic-Demographic Model
- -- Historical Migration Model
- -- Zero Migration Model
- Linear Regression Model

NJLWD chose the Economic-Demographic Model as the preferred model for the county population and employment projection. In this model, related methods are used. Cohort-survival method is used to project population initially but the projection is adjusted by how future labor demand affects age-specific migration.

It should be noted that MPO's make some projections at the municipal level. However, each MPO distributes the county totals to municipalities in different manners. Again, SJTPO does not report its method. The allocation method used by NJTPA is similar to the Econsult method. However, DVRPC focuses on adjusting the difference in the current forecast and the previous one; and relies much on the input of county planning staff to revise the municipal forecasts. Once again, the inconsistency is problematic for developing statewide rules.

2018 County Population Projections

NJLWD's Projections of Total Population by County: 2004 to 2025

(http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi03/Table1.pdf) provides county population projections for 2009, 2014, 2020, and 2025. The NJLWD projection figures are reported to the nearest 100 persons. An interpolation of the 2014 and 2020 projections in this table generated the implied 2018 county population projection that serves as the county control total in the Task 1 housing allocation model.

2018 County Employment Projections

NJLWD's Projections of Total Employment by County: 2004 to 2014

(http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi04/index.html#ind) provides tables of industry employment projections for each county in New Jersey. Unlike the occupational employment tables that contain data on employment held by county residents regardless of work location, these 21 tables report numbers of people working each county regardless of residence location. Each table reports the 2014 projected employment level for the private sector, local government, state government, and federal government, as well as the actual 2004 employment level. To keep a range of projection, these figures are rounded to the nearest 50 jobs.

Since no state government employment is reported at the municipal level, any model to distribute county employment to municipalities cannot accurately allocate employment in this sector. This point will be further elaborated in Section 3.2.2. As such, the employment sum of the private sector, local government and federal government of each county serves as the control total instead of the total employment.

NJLWD does not provide the 2018 projection, so it has to be extrapolated from known historical trends. An annualized growth rate was computed based on the 2002 county employment estimates (from http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi14/cvremp02.zip) and the 2014 county

projection mentioned above (both exclude the state government sector). This rate is applied to extrapolate the 2018 county employment projections (covering only the private sector, local government and federal government) that serve as the control totals for the 2018 municipal employment projections.

1.3.2 NJLWD Historical Estimates <1>

The historical data at the municipal level are crucial for the allocation model because they exhibit the historical growth rates of each municipality, particularly the reference period between 1993 and 2002. They are also used to evaluate how historical growth affected by its respective build-out constraint. The municipal population and employment estimates in 2002 are critical in the allocation model because the initial allocation (before taking into account various constraints and spillover) is based on historical growth from 1993 to 2002 and the extent to which a municipality is built-out.

Municipal Population Data

NJLWD computes annual population estimates at the municipality level based on the estimations provided by the US Census Bureau. Two sets of NJLWD population data are used in this study. The first is a table in which NJLWD reported the residents' population by municipality for each year between 1990 and 1999 (as revised in July 2003 to make necessary adjustments for the 2000 census results):

http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi02/inter9090.htm. The second is an Excel table (released in July 2007) that reports the US Census Bureau estimates of resident population for each municipality for each year between 2000 and 2006:

http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi02/mcd/mcdest06.xls.

NJLWD reports these population estimates as at July 1 of each year, so the population/housing estimates in this report should be considered as mid-year figures. The 1993 and 2002 municipal population estimates were entered into the allocation model and in turn converted to housing units for the calculation of historical growth rates.

Municipal Employment Data

Compared to the population data, the employment data for New Jersey are more complicated because of data privacy requirement issues and the change from the SIC classification system to the NAICS system in the late 1990s. Consequently, the data coverage across geographical areas and sectors (private, local government, state government, and federal government) varies across years. In addition, employment estimates at the state level do not always tie to sums of local estimates.

More importantly, state government employment information is not reported by municipality. The employment allocation model in Task 1 excludes state government employment because of the absence of information to guide its distribution at the sub-county level. Statewide, about 3 percent of the total employment falls into the state government sector.

The NJLWD municipal employment data covers the period between 1993 and 1999. After 1999, the municipal employment was not reliable again until 2003. The data quality of these 8 datasets varies tremendously because of underreporting and missing data. From several conversations with the NJLWD researchers, we have identified five years of reliable municipal employment estimates for the private sector, the local government, and the federal government that match the data reported at the state and county levels. These years are 1997 and 2003, 2004, 2005, and 2006.

[page=6110] The employment estimates for 1993 were reliable for the federal government and for the private sector, but the reported local government jobs were about 60 percent undercounted when compared to the state total. <2> The growth rate of local government jobs between 1997 and 2003 has been used to extrapolate backward these undercounts

for each municipality. Through that process, the aggregation of local government jobs is ensured to be close to those reported at the county level as well as at the state level.

The allocation model requires employment data for 2002 as an input but NJLWD does not report employment at municipal level. To overcome this problem, the 2002 employment was interpolated for each of the three sectors (the private sector, the local government, and the federal government) between 1997 and 2003. Since the estimation is only one year backward from 2003, if any estimation error exists, it should be minimal. In addition, the 2002 estimations are summed at the county level and adjusted so that they match those reported at the county level by NJLWD.

The datasets for 1993, 1997, 2003 and 2006 can be found at:

- -- http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi14/muns293.zip
- -- http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi14/muns297.zip
- -- http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi14/mun/mun03.xls

As year round averages are not available in these three datasets, this report used the September estimates for consistency across years. Consequently, all employment estimates are treated as in September. <3>

Historical Estimates at State and County Levels

The NJLWD provides population and employment data at the state and county levels. The employment data are used to identify undercounting at the municipal level due to missing data, data suppression and undistributed portions. As mentioned above, the county employment is also used to as a control total in the correction of underestimation of the local government employment in 1993 and the estimation of the 2002 employment at the municipal level.

The population data can be found at:

http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi02/index.html#county.

Employment data are at:

http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi14/#.

1.3.3 NCNBR Growth Capacity Analysis

The vacant land analysis results provided by NCNBR are key data inputs to the allocation model. Based on detailed GIS analysis at the sub-municipality level, this analysis provides estimates of the potential number of housing units and the square footage of nonresidential floor space (by major types of office, retail, warehouse/industrial, and blended) that each municipality may potentially develop after 2002. These estimates are essentially "build-out" constraints for each municipality.

1.3.4 U.S. Census, American Community Survey, and Public Use Micro Sample Data

The U.S. Bureau of Census provides various data at the municipal level that are essential for Task 1, including ratios of: occupancy rate, headship rates, average household size, and housing unit/population ratios for 1990 and 2000. These data are useful for Task 1 even though they are not reported annually.

Additional data from the American Community Survey and from PUMS provide useful references, particularly for post

2002 data at the county and state levels. This data provides information about recent trends in headship rates and other ratios.

2.0 OVERVIEW OF THE ALLOCATION MODEL

The most common method used by researchers to disaggregate high-level forecasts to smaller geographic areas is the constant share allocation method. Essentially, this method first calculates the share of each smaller area in the larger area, then multiplies these shares by the projection of the larger area to derive the projections of the smaller areas.

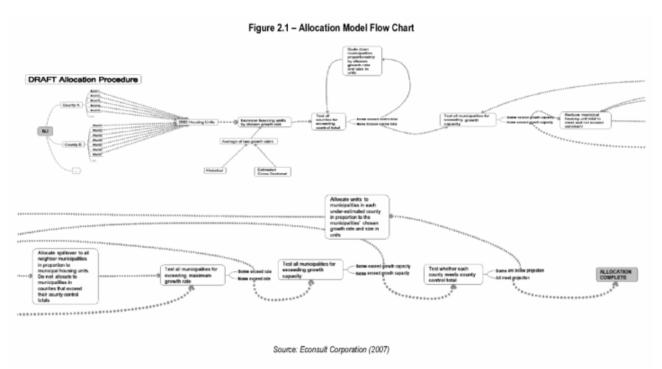
The constant share method has three major drawbacks.

- -- It assumes a uniform growth rate across every sub-entity,
- -- It does not allow these shares to change over the projection period, and
- -- It does not factor in local conditions such as growth constraints.

To overcome these drawbacks, the Task 1 team developed a more sophisticated allocation model that is consistent with basic urban economic theories. This model was then used to allocate the 2018 countywide projected growth estimates across the municipalities in the county. The 2018 estimate of population was interpolated from the NJLWD data and the 2018 estimate of employment was extrapolated from the NJLWD data. There are four major inputs to the allocation model:

- -- NJLWD 2018 projections of population and employment at the county level
- -- Historical growth rates of population and employment of each municipality between 1993 and 2002
- -- Post-2002 growth capacity as estimated from the NCNBR vacant land analysis
- -- The implied growth rate estimated by a regression model on the relationship between the 1993 build-out level and historical growth rates of 566 municipalities (Exhibits A and B).

The allocation process is simple in concept but complex in implementation. The process is iterative in nature and is shown in Figure 2.1. While the flow chart is specifically for the housing model, the employment allocation model has essentially the same procedures. Below, the basic steps of the allocation model are delineated below.



Click here for image

[page=6112] The first step projects the 2018 housing units and employment for each municipality based on the chosen growth rate based on the average of the historical growth rate of the municipality and the implied growth rate estimated from the historical build-out level (as discussed in Exhibits A and B). These growth rates were calculated over the period from 1993 through 2006. This is a longer sample period than the sample used in the earlier set of projections and it reflects the most recent historic data available. These projections are aggregated at the county level and compared to the 2018 projections (labeled here as the county control total). <4> When the sum exceeds the county control totals, the projections are proportionately scaled down.

The second step in the allocation model is to verify that the physical growth capacity is not exceeded. The NCNBR vacant land analysis provides estimates of the maximum growth level a municipality may reach after 2002. The growth of each municipality is checked to see if such limits were achieved. <5> The 2018 projections are constrained to not exceed the municipal growth capacity.

There are two exceptions to the limits imposed by the county control totals and the municipal growth capacity constraints. The first exception is in Bergen County which has been densely developed for a number of years. The municipal growth constraints in Bergen County are so low that it is not possible for employment or housing to grow enough to reach the county control totals. The second exception occurs in a small number of municipalities where the actual growth that took place between 2002 and 2006 was larger than the estimated growth that could potentially take place after 2002 based on the NCNBR vacant land analysis. In those cases the municipal growth capacity estimate was replaced by the actual level of development during 2006.

The third step is to ensure that the projected growth rate of each municipality does not exceed the maximum of either its historical growth rate or its implied growth rate estimated from the historical build-out level. <6> This step imposes a maximum growth rate constraint and ensures that the future growth of each municipality will not be too fast based on both historical trends and the degree to which development is constrained by available land. This approach allows communities to grow faster than their historical rates, but tends to inhibit growth when a municipality is closer to

complete build-out. Note that in the final step of the model, municipalities may exceed the maximum of the historical and build-out growth rate if it is required to scale to the control totals.

In the fourth step, the spillover amounts for municipalities that had growth rates beyond either the physical growth capacity or the maximum growth rate constraint (as established in the third step) are calculated. The spillover is sent to any adjacent municipalities whose growths have not reached their growth capacity or maximum growth rate. Once adjacent municipalities reach their constraints, any remaining spillover is allocated to the next ring of adjacent municipalities.

These four steps are repeated to see if individual municipalities exceed the growth capacity and maximum growth rate constraints after receiving a portion of the spillover. Each successive iteration results in a smaller and smaller spillover. The iterations continue until all of the spillover has been allocated and no municipality exceeds its constraints.

The fifth step is to re-check if the county sum is below the county control total after all spillover is distributed. If the two do not match within a range of 0.1, a ratio of municipal sum at the county total to the county control total is created. Then the ratio is multiplied to the 2018 projection for municipalities that have not reached their growth constraints. In other words, municipalities that have not reached their growth constraints would be scaled up so that the county sum matches the control totals. Then the second and onward steps would start again until the difference between county sum and county control total match.

The results are presented in terms of changes from 2004. The 2004 data reported for employment are based on data published by the Department of Labor; the housing data are based on 2000 Census data and are adjusted for new certificates of occupancy and demolitions through 2004. The selection of the 2004 - 2018 time frame to present the results is based on the NJCOAH planning horizon.

3.0 HOUSING ALLOCATION MODEL

3.1 Scope

The purpose of the Round 3 COAH is to estimate the statewide and regional affordable housing obligations. The housing unit, therefore, logically becomes the unit of analysis for the residential growth allocation model. Furthermore, the residential portion of the constraint developed by NCNBR's vacant land analysis for the post-2002 municipal growth capacity is expressed in dwelling units.

The U.S. Census Bureau and NJLWD do not provide housing unit figures at the municipal level on a yearly basis. Reliable housing unit figures are only reported in 1990 and 2000 (Summary Tape File 1 of the 1990 census and Summary File 1 of the 2000 census). The availability of these data allows the computation of housing unit to population ratios for 1990 and 2000. Based on these two ratios, we estimated a 1993 ratio using linear interpolation. Multiplying the interpolated 1993 ratio by the estimated 1993 population levels for each municipality provided the estimated number of housing units for each municipality in that year.

The estimation of the number of housing units after 2000 was completed in a slightly different manner. In the absence of any information on the future relationship between population and housing units, the housing unit to population ratio used in the allocation model is the 2000 ratio. In other words, it is assumed that the 2000 ratio will remain constant through 2018. The 2002 housing unit amount is projected by multiplying the estimated 2002 population by the 2000 housing unit to population ratio.

3.2 Procedure

Housing units in 2018 for each municipality were projected by initially applying the average municipal historical

growth rate and the implied growth rate of growth based on the 1993 build-out level. This implied growth rate is econometrically estimated by a cross-sectional regression of 1993 to 2006 municipal housing growth as a function of the percentage of the total possible build-out that has already occurred in 1993. As expected, this estimation--discussed in greater detail in Exhibit A--reveals that growth slows as municipalities approach their build-out capacity. Henceforward, we refer to the growth rate implied by this cross-sectional relationship as the "build-out growth rate." The average of the historical growth rate and the implied "build-out growth rate" is used to reflect the fact that there are unique circumstances associated with individual municipalities that may not be captured in the build-out growth rate, but are reflected in the historical rates. Growth rates are expected to fall as municipalities approach complete build-out, which is reflected, in part, by averaging build-out and historical rates.

The initial projections are then scaled to be consistent with the county control totals. Since the county control totals from the NJLWD 2018 projection are in terms of population rather than housing units, it is necessary to convert the housing unit projections to population projections. The projected [page=6113] number of housing units per municipality was then divided by the 2000 housing unit to population ratio to derive the projected 2018 municipal population. These population figures were added at the county level and compared to the projected 2018 county control totals.

If the county control totals were exceeded, the municipal population was scaled down in proportion to its growth between 2002 and 2018, until the sum of the population within a county matched that of the county control totals. The adjusted municipal population was then converted back to housing units after the downward scaling. The new projected growth was then compared to the two constraints: a) the post-2002 physical growth capacity, and b) the maximum growth rate constraint, i.e., the maximum of its historical growth rate and the build-out growth rate.

The above step provides an estimate of the spillover of housing units for those municipalities that either reached its physical growth capacity or exceeded the maximum growth rate constraint. These spillover units were distributed to neighboring municipalities until the receiving municipalities reached growth limits (due to either physical growth capacity or the maximum growth rate constraints).

The redistribution of the spillover housing units proceeded until all units were fully allocated and none of the receiving municipalities exceeded the two growth limit conditions. Once this was achieved, a scaling up procedure was performed for municipalities in those counties for which the sum of the projected 2018 population at the county level was below the county control total, even after accepting spillover housing units from other counties. However, municipalities that have reached its maximum growth limit will not be scaled up. After this scaling up procedure, the same spillover allocation procedure was performed until the spillover was fully distributed. <7>

The allocation model provides housing unit figures for 2002 and 2018. To estimate the 2004 housing units, we use a straight-line interpolation between 2002 and 2018.

3.3 Results

In 2002, the number of residents in New Jersey was 8,577,510 and it grew to 8,675,880 in 2004. According to NJLWD, the projected state population in 2018 is 9,411,670. This implies an absolute growth of 735,790 residents between 2004 and 2018, or a total growth of 8.5 percent in that period. It is important that keep in mind that these numbers are projections 10 years into the future, based on historical experience, demographic and economic theory. Since the future does not exactly mimic the past, the actual population growth will differ from these projections.

Based on the 2000 Census and subsequent certificates of occupancy as well as demolitions, it is estimated that in 2002 there were 3,385,302 housing units in New Jersey. Housing grew to 3,428,504 units in 2004. The allocation model estimated that in 2018, New Jersey would have 3,697,952 housing units. For the 2004 to 2018 period, the net increase is *[269,952]* *269,448* units or a total growth of 8 percent. At this rate of growth, the state will gain about 19,246 housing units per annum.

Figure 3.1 summarizes the allocation by COAH region. The fastest growth in housing units is found in COAH Region 3, 4, and 5 (in descending order), all would experience over a 9 percent growth between 2004 and 2018.

Figure 3.1 - Housing Units by COAH Region: 2002, 2004 and 2018

| COAH region | Units in | Units in | Units | Net | Annual |
|------------------|-----------|-----------|-----------|---------|-------------|
| | 2002 | 2004 | Allocated | Changes | Rate of |
| | | | 2018 | 2004 - | Change 2004 |
| | | | | 2018 | to 2018* |
| 1 - Northeast | 815,923 | 821,701 | 864,193 | 42,492 | 0.36% |
| 2 - Northwest | 720,926 | 726,750 | 774,894 | 48,144 | 0.46% |
| 3 - West Central | 443,678 | 449,911 | 497,964 | 48,053 | 0.73% |
| 4 - East Central | 644,405 | 656,113 | 721,977 | 65,864 | 0.69% |
| 5 - Southwest | 468,928 | 478,002 | 522,752 | 44,750 | 0.64% |
| 6 - South- | 291,442 | 296,027 | 316,172 | 20,145 | 0.47% |
| Southwest | | | | | |
| New Jersey | 3,385,302 | 3,428,504 | 3,697,952 | 269,448 | 0.54% |

Source: Econsult Corporation (2008)

Figure 3.2 summarizes the housing allocation by county. All counties grew in housing units but the growth projected for Hudson County and Cape May County is very weak. The highest projected housing growth rates between 2004 and 2018 are found in Ocean County, Sussex County and Gloucester County (in descending order). It should be noted that the growth in housing units may not correspond to the change in population because each county has different housing unit to population ratios.

[page=6114] Figure 3.2 - Housing Units by County: 2002, 2004 and 2018

| County | Units in | Units in | Units | Net | Annual Rate |
|--------|----------|----------|-----------|---------|-------------|
| | 2002 | 2004 | Allocated | Changes | of Change |
| | | | 2018 | 2004 - | 2004 to |

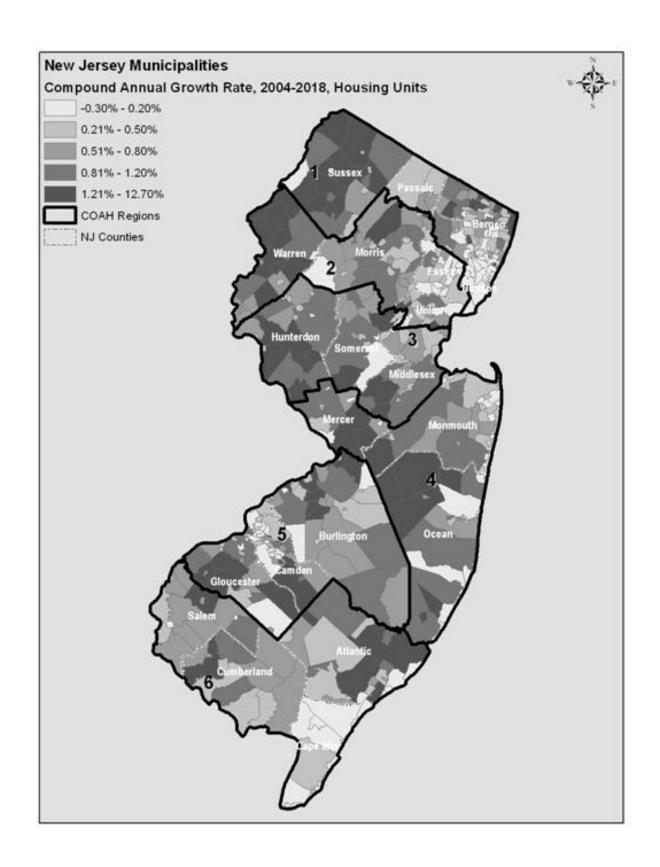
^{*}Growth rates are calculated at a compound (exponential) annual rate

| | | | | 2018 | 2018* |
|------------|-----------|-----------|-----------|---------|-------|
| ATLANTIC | 118,273 | 120,650 | 132,708 | 12,058 | 0.68% |
| BERGEN | 343,453 | 344,622 | 363,879 | 19,257 | 0.39% |
| BURLINGTON | 168,944 | 172,380 | 191,245 | 18,865 | 0.74% |
| CAMDEN | 200,465 | 202,988 | 215,483 | 12,495 | 0.43% |
| CAPE MAY | 93,085 | 94,234 | 95,682 | 1,448 | 0.11% |
| | | | | | |
| CUMBERLAND | 53,540 | 54,154 | 58,749 | 4,595 | 0.58% |
| ESSEX | 303,353 | 305,660 | 316,348 | 10,688 | 0.25% |
| GLOUCESTER | 99,519 | 102,634 | 116,024 | 13,390 | 0.88% |
| HUDSON | 242,424 | 244,488 | 247,661 | 3,173 | 0.09% |
| HUNTERDON | 47,044 | 48,072 | 54,264 | 6,192 | 0.87% |
| | | | | | |
| MERCER | 137,055 | 139,213 | 150,363 | 11,150 | 0.55% |
| MIDDLESEX | 280,284 | 283,786 | 310,714 | 26,928 | 0.65% |
| MONMOUTH | 248,411 | 251,796 | 268,102 | 16,306 | 0.45% |
| MORRIS | 180,099 | 182,447 | 200,365 | 17,918 | 0.67% |
| OCEAN | 258,939 | 265,104 | 303,512 | 38,408 | 0.97% |
| PASSAIC | 171,418 | 172,946 | 184,690 | 11,744 | 0.47% |
| SALEM | 26,544 | 26,989 | 29,033 | 2,044 | 0.52% |
| | | | | | |
| SOMERSET | 116,350 | 118,053 | 132,986 | 14,933 | 0.85% |
| SUSSEX | 58,628 | 59,645 | 67,963 | 8,318 | 0.94% |
| UNION | 193,926 | 194,291 | 208,201 | 13,910 | 0.50% |
| | | | | | |
| WARREN | 43,548 | 44,352 | 49,980 | 5,628 | 0.86% |
| NEW JERSEY | 3,385,302 | 3,428,504 | 3,697,952 | 269,448 | 0.54% |

Source: Econsult Corporation (2008)

The full allocation result by municipality can be found in Exhibit A. The housing growth between 2004 and 2018 is also illustrated in a map showing municipal rates (see Figure 3.3).

[page=6115] Figure 3.3 - Housing Unit Growth Rates by Municipality, 2004 to 2018



Click here for image

Source: Econsult Corporation (2008)

[page=6116] It should be noted that the projection is for total housing units in 2018 and net changes in units from 2004 to 2018. The increase in number of housing units is not, however the total number of new units that need to be constructed over the period. In addition to building the new projected here, additional units must be constructed to replace units demolished over the same period. The additional units required to offset demolition is not analyzed in this task.

4.0 THE EMPLOYMENT ALLOCATION MODEL

4.1 Scope

4.1.1 Unit of Analysis

The majority of the input data for this model are employment data. These include the 1993 and 2002 municipal employment levels and the NJLWD 2018 projected county employment levels. As indicated in Section 3, the state government sector is not reported anywhere at the municipal level, so this employment allocation model only covered three sectors: private employment, federal government, and local government. State government employment will be discussed separately. The other input data is non-residential build-out constraints.

4.1.2 Converting Floor Space to Employment

The physical growth capacity in this model is based on the data generated by the NCNBR vacant land study. The data are expressed in terms of gross floor area and are broken down into office, retail, warehouse/industrial, and others/blended for almost all municipalities.

When testing whether the future growth limit is reached with the projected employment level, it is important to translate the gross floor space into employment. Task 4 includes a literature review and a sample survey for New Jersey on employee/floor space ratios by type of uses. Here are the ratios (in terms of number of employees per 1,000 square feet of gross floor space) we recommended in Task 4:

| Office | 3.32 |
|--------------------------------|------|
| Retail | 2 |
| Warehouse | 1.72 |
| Manufacturing and Industry | 1.43 |

These ratios could be sensitive to the estimated amount of employment based on the potential nonresidential development, so all chosen ratios in the employment allocation model were within the upper and lower bound of those recommended by Task 4. For the purposes of this analysis this resulted in an average ratio of 2.9 per 1000 feet to convert build-out square feet to employment which is close to the median ratio found in Task 4. Using an adjustment of

8% for vacancies and 15% for common areas this translates to 2.25 employees per 1000 square feet. This ratio was not identical for all municipalities because their current mix of commercial space varies by municipality.

4.2 Procedure

The employment model is similar in structure to the housing model. Statewide, the historical employment growth rate (excluding the state government sector) is approximately 1.3 percent between 1993 and 2002, but some municipalities experienced annual rates over 15 percent in this period. While the majority of such municipalities had a very small employment base in 1993, some mid-size municipalities (with 1993 employment around 2,000 jobs) like Allendale Borough in Bergen County, Swedesboro Borough in Gloucester County, and Monroe Township in Middlesex County, had annual rates exceeding 15 percent. In other words, these municipalities more than doubled their employment primarily due to new development. Such fast employment growth rates are unlikely to sustain, especially when their growth capacity is being used up. In addition, initial tests showed that the allocation based on the average of the historical rate and the build-out growth rate resulted in a high degree of spillover as many municipalities would hit the two growth constraints in the model.

In the first step, the initial municipal employment by 2018 was projected based on the average of the historical growth rate or the build-out growth rate. These initial projections were summed at the county level and compared to county control totals. In the case of exceeding the county control totals, the employment of each municipality was scaled down.

Next, the growth of each municipality was measured against its physical growth capacity to ensure that the build-out level did not exceed 100 percent of its physical development capacity. It was also compared to the maximum growth rate (either the historical rate or the build-out growth rate). The spillover was then estimated and sent to those adjacent municipalities that had the capacity to receive the spillover.

In each round of the allocation of the spillover, each receiving municipality was checked to ensure that the growth increment did not violate the two growth constraints of the model (growth capacity and maximum growth rate).

For counties that had a sum of initial projected employment less than the county control totals, their municipalities would receive cross-county spillover under the same set of constraints. The county total was then compared to the control total. If the county total was still below the control total, the municipality employment was scaled upward and the spillover allocation procedures followed.

This process resulted in a municipal allocation that summed to within 0.4% of the total statewide employment. Each county was close to its control total as well. The remaining 0.4% of employment was allocated by proportionately scaling up or down municipalities in each county such that the projections summed to the county control totals exactly and neither the growth rate nor build-out constraints were violated. <8>

4.3 Results

In 2002, the employment (excluding state government employees) in New Jersey was 3,640,016, slightly lower than the 1999 figures, reflecting the recession in 2000 and 2001. According to the NJLWD projected 2014 employment, it is extrapolated that in 2018, the employment would reach 4,477,889. This implies an absolute growth of 818,898 jobs between 2004 and 2018, or a total growth of 22 percent during that period. At this rate of growth, the state will gain about 58,493 jobs per annum from 2004 to 2018. Note that the NJLWD projections reflect past history and market realities. As with population, the actual employment growth will differ from that projected by the NJLWD. The full allocation result by municipality is in Exhibit B. Map 2 below shows the annual growth rate by municipality.

Figure 4.1 summarizes the employment allocation by COAH region. The fastest growth is found in COAH Region 4, which is projected to grow at an annual rate of 2.1% between 2004 and 2018.

[page=6117] Figure 4.1 - Employment by COAH Region: 2002, 2004 and 2018

| COAH Region | Employment | Employment | Employment | Net | Annual |
|------------------------|------------|------------|------------|----------|---------|
| | in 2002 | in 2004 | Allocated | Changes | Rate of |
| | | | 2018 | Between | Change |
| | | | | 2004 and | 2004 to |
| | | | | 2018 | 2018 |
| 1 - Northeast | 882,163 | 885,699 | 1,063,924 | 178,225 | 1.32% |
| 2 - Northwest | 879,649 | 877,676 | 1,068,027 | 190,351 | 1.41% |
| 3 - West Central | 579,185 | 584,742 | 700,025 | 115,284 | 1.29% |
| 4 - East Central | 553,902 | 575,027 | 726,719 | 151,693 | 1.69% |
| 5 - Southwest | 479,068 | 495,337 | 614,834 | 119,497 | 1.56% |
| 6 - South Southwest | 266,049 | 271,208 | 306,625 | 35,417 | 0.88% |
| New Jersey | 3,640,016 | 3,689,688 | 4,480,153 | 790,465 | 1.40% |

Source: Econsult Corporation

Figure 4.2 summarizes the employment growth of each county. All would increase their employment base and the highest projected growth is found in Salem County, Sussex County, and closely followed by Mercer County and Burlington County. On the other hand, Cape May County and Bergen County are projected to experience slow growth.

Figure 4.2 - Employment by County: 2002, 2004 and 2018

| County | Employment | Employment | Employment | Net | Annual |
|--------|------------|------------|------------|---------|---------|
| | in 2002 | in 2004 | Allocated | Changes | Rate of |
| | | | 2018 | 2004 - | Change |
| | | | | 2018 | 2004 to |

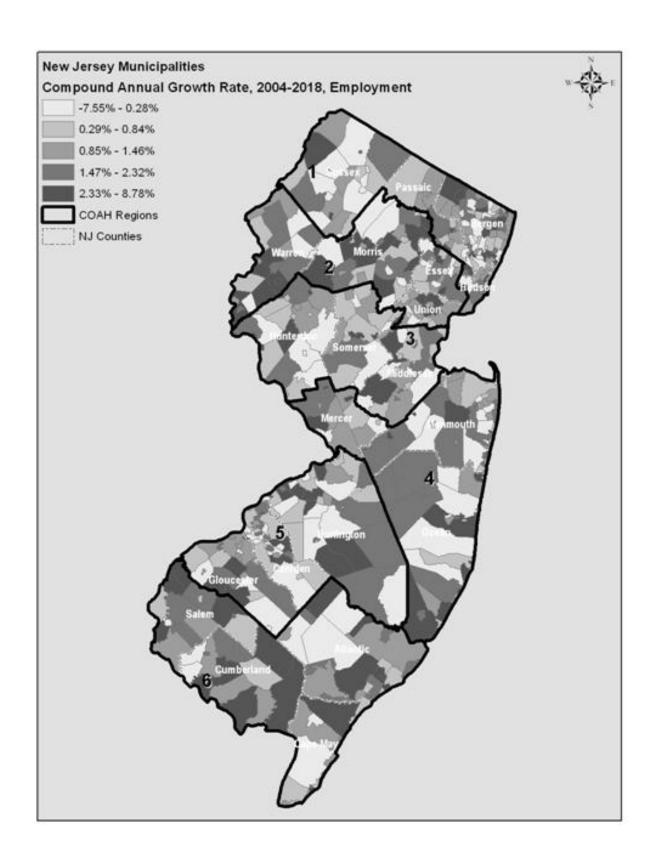
| | | | | | 2018 |
|------------|---------|---------|---------|--------|-------|
| ATLANTIC | 142,852 | 143,225 | 167,237 | 24,012 | 1.11% |
| BERGEN | 443,731 | 442,609 | 512,976 | 70,367 | 1.06% |
| BURLINGTON | 187,445 | 194,415 | 244,948 | 50,533 | 1.66% |
| CAMDEN | 198,888 | 203,132 | 245,538 | 42,406 | 1.36% |
| CAPE MAY | 44,463 | 47,516 | 48,496 | 981 | 0.15% |
| CUMBERLAND | 56,497 | 57,653 | 64,972 | 7,319 | 0.86% |
| ESSEX | 334,564 | 333,223 | 392,523 | 59,300 | 1.18% |
| GLOUCESTER | 92,735 | 97,790 | 124,348 | 26,558 | 1.73% |
| HUDSON | 230,705 | 230,613 | 288,670 | 58,057 | 1.62% |
| HUNTERDON | 44,009 | 46,938 | 58,136 | 11,199 | 1.54% |
| MERCER | 170,956 | 176,631 | 224,055 | 47,425 | 1.71% |
| MIDDLESEX | 371,633 | 373,245 | 439,204 | 65,959 | 1.17% |
| MONMOUTH | 241,739 | 250,996 | 315,332 | 64,336 | 1.64% |
| MORRIS | 273,223 | 278,825 | 353,789 | 74,964 | 1.72% |
| OCEAN | 141,207 | 147,400 | 187,332 | 39,932 | 1.73% |
| PASSAIC | 170,101 | 171,149 | 208,168 | 37,019 | 1.41% |
| SALEM | 22,237 | 22,815 | 25,920 | 3,106 | 0.92% |
| SOMERSET | 163,543 | 164,559 | 202,685 | 38,126 | 1.50% |

| NEW JERSEY | 3,640,016 | 3,689,688 | 4,480,153 | 790,465 | 1.40% |
|------------|-----------|-----------|-----------|---------|-------|
| WARREN | 36,177 | 37,076 | 46,005 | 8,928 | 1.55% |
| UNION | 235,685 | 228,552 | 275,710 | 47,159 | 1.35% |
| SUSSEX | 37,626 | 41,328 | 54,110 | 12,783 | 1.94% |

Source: Econsult Corporation

The full allocation result by municipality can be found in Exhibit B. The employment growth between 2004 and 2018 is also illustrated in a map showing municipal rates (see Figure 4.3).

[page=6118] Figure 4.3 - Employment Growth Rates by Municipality, 2004 to 2018



Click here for image

Source: Econsult Corporation (2007)

5.0 STATE GOVERNMENT EMPLOYMENT

The employment allocation model does not cover this sector because of data deficiency at the municipal level. However, to complete the employment picture, some discussion on the state government sector is deserved.

First, from a policy perspective, the growth of state government employment is usually not the prerogative of local government. The planning and development of state facilities is initiated by the state government. As such, the housing obligations resulted from the growth of state government employment should be better born by the state government.

Second, the state government sector only accounts for about 3.5 percent of the total employment in New Jersey. For majority of the municipalities, this sector has little housing impact. However, due to the highly uneven geographical distribution of state government jobs, few municipalities, such as Trenton, have a fairly high share of jobs in this sector. Over the past decade, over one of six jobs in Mercer County belonged to the state government. The available data, however, are not sufficient to identify the distraction with the county.

[page=6119] The NJLWD reported the state government sector at the county level for selected years (1993 through 2004 and 2014) and the estimates are in the nearest 50 jobs. In 2002, the state government hired about 128,250 employees and over 60 percent of these jobs were in Mercer County, Essex County and Middlesex County. In 2004, the state government sector is estimated to be of 148,050 employees and those three counties continued to dominate 61 percent.

Based on the growth between 2002 and 2014, we extrapolate the county by county state government employment. It is projected that by 2018, the state government sector will grow to 171,160 at a rate slightly higher than other sectors. Consequently, the share of state government sector in all employment will marginally rise to 4 percent. The net increase is about 23,110 in this 14 year period, or about 1,650 per annum for the whole state. Of course future growth of state employment is affected by many factors including the fiscal health of the state, so the projection could be speculative.

Figures 5.1 and 5.2 present the change of state government employment between 2002 and 2018:

Figure 5.1 - State Government Employment by COAH Region: 2002, 2004 and 2018

| COAH region | Employment in 2002 | Employment in 2004 | Employment in 2018 | Net Changes 2004-2018 |
|------------------|--------------------|--------------------|--------------------|--------------------------|
| 1 - Northeast | 13,650 | 15,450 | 17,300 | 1,850 |
| 2 - Northwest | 27,900 | 32,550 | 38,300 | 5,750 |
| 3 - West Central | 21,700 | 28,600 | 35,450 | 6,850 |
| 4 - East Central | 42,000 | 44,800 | 51,160 | 6,360 |

40 N.J.R. 5965(a)

| New Jersey | 128,250 | 148,050 | 171,160 | 23,110 |
|-------------------------|---------|---------|---------|--------|
| 6 - South- Southwest | 10,750 | 12,100 | 12,850 | 750 |
| 5 - Southwest | 12,250 | 14,550 | 16,100 | 1,550 |

Source: Econsult Corporation (2007)

Figure 5.2 - State Government Employment by County: 2002, 2004 and 2018

| County | Employment in 2002 | Employment in 2004 | Employment in 2018 | Net Changes 2004-2018 |
|------------|--------------------|--------------------|--------------------|-----------------------|
| Atlantic | 3,400 | 4,250 | 4,900 | 650 |
| Bergen | 5,350 | 5,200 | 5,300 | 100 |
| Burlington | 3,750 | 4,250 | 4,300 | 50 |
| Camden | 6,000 | 7,150 | 8,000 | 850 |
| Cape May | 1,850 | 1,950 | 2,000 | 50 |
| Cumberland | 4,900 | 5,250 | 5,250 | 0 |
| Essex | 21,600 | 25,700 | 30,600 | 4,900 |
| Gloucester | 2,500 | 3,150 | 3,800 | 650 |
| Hudson | 2,550 | 3,800 | 4,600 | 800 |
| Hunterdon | 2,800 | 3,250 | 3,400 | 150 |
| Mercer | 37,950 | 40,350 | 46,650 | 6,300 |

| New Jersey | 128,250 | 148,050 | 171,160 | 23,110 |
|------------|---------|---------|---------|--------|
| Warren | 500 | 500 | 500 | 0 |
| Union | 3,400 | 3,550 | 4,000 | 450 |
| Sussex | 400 | 400 | 400 | 0 |
| Somerset | 1,000 | 1,000 | 1,000 | 0 |
| Salem | 600 | 650 | 700 | 50 |
| Passaic | 5,350 | 6,050 | 7,000 | 950 |
| Ocean | 900 | 1,100 | 1,100 | 0 |
| Morris | 2,400 | 2,800 | 3,200 | 400 |
| Monmouth | 3,150 | 3,350 | 3,410 | 60 |
| Middlesex | 17,900 | 24,350 | 31,050 | 6,700 |

Source: Econsult Corporation (2007)

[page=6120]

<1> The three MPOs report population and employment at the municipality level through 2000 to 2030 at five year intervals, but not for earlier years. Since we adopted the NJLWD projection, the MPO data is used for reference only.

<2> The same undercounting of local government jobs occurred in other years except 1997 and 2003. The 1994 and 1995 data missed all federal government employment figures.

<3> In some cases the municipal employment data for 2004 and 2006 from the department of labor are not complete. Depending upon the individual situation, these data may be estimated by interpolation between years or extrapolation from previous years.

<4> The housing unit comparison is performed after converting the 2018 municipal housing unit projection to population by applying the 2000 municipal population to housing unit ratio. Direct comparison cannot perform because 2018 housing projection is unavailable.

- <5> Since the physical growth capacity only provides number of housing units for residential land, and floor space for nonresidential land, the nonresidential floor space is converted to employment before the verification. The conversion factors are discussed in Section 6.1.2.
- <6> In section 5.2, we describe in more details how we apply the empirical relationship between housing growth and historical build-out level.
- <7> In very rare instances in which historical growth rates have been unsustainably high, primarily because they are starting from a low base, we have exogenously forced growth to slow from the historical rate.
- <8> In this final step, adjacency was not taken into consideration.

EXHIBIT A - MUNICIPAL GROWTH RATES IN THE HOUSING ALLOCATION MODEL

Housing growth of a municipality should slow down as the municipality's physical growth capacity is being reached. In other words, a municipality is unlikely to sustain its historical growth rates as measured between the 1993 and 2002 period in the following 16 years if it has already approached a high build-out level.

To capture this relationship between the anticipated housing growth rate between 2002 and 2018 and the 2002 build-out level, a regression model was developed to empirically estimate the implied historical growth rates that measure how build-out levels affect future growth rates. In this model, the dependent variable is the housing growth rate (a linear annual growth rate) between 1993 and 2002 for each of the 566 municipalities. The independent variable is the 1993 build-out level and was estimated by dividing the number of housing units in 1993 with the sum of the 2002 housing units and the number of potential housing units that could be built after 2002. This equation applies to municipalities that had a positive growth between 1993 and 2002. However, for a few declining communities, this equation may end up a build-out ratio over 100 percent when the amount of housing units lost between 1993 and 2002 is larger than the post-2002 growth capacity. In this case, the build-out level is estimated by changing the denominator in this equation to the sum of the 1993 housing units and the number of potential housing units that could be built after 2002.

This regression model had 566 observations initially but outliers with historical growth rates above the 99 percentile or below the 1 percentile in the sample were excluded in the model. Since municipalities within the same COAH Region may behave differently as a group from others in a different COAH Region, the slope and the y-intercept of the implied rates would also differ by COAH region. Two sets of dummy variables are introduced in the model. The first set of 5 dummy variables captures the effects of the COAH region, i.e. it will change the y-intercept or the initial historical rate when the build-out level is 0. The second set of dummy variables measure the interaction effects of COAH region on the slope of the curve.

The functional form of the model is in cubic form (a declining curve with two turns). The goodness of fit of a regression model is usually measured by coefficient of determination (adjusted R Square that explains the percent of variations in the data). The Task 1 regression model of implied historical growth rate of housing units has a coefficient of determination of 0.4778, a strong result for cross-sectional regression models.

Figure A.1 - Housing Unit by Municipality: 2002, 2004 and 2018

| Municipality | COAH | County | Units | Units | 2018 |
|--------------|--------|--------|-------|-------|-------|
| | Region | | in | in | Units |
| | | | 2002 | 2004 | Based |

| | | | | | On Historic Growth |
|-------------------------|---|----------|--------|--------|--------------------------|
| ABSECON CITY | 6 | ATLANTIC | 3,013 | 3,097 | 3,549 |
| ATLANTIC CITY | 6 | ATLANTIC | 20,205 | 20,161 | 19,961 |
| BRIGANTINE CITY | 6 | ATLANTIC | 9,388 | 9,261 | 9,368 |
| BUENA BOROUGH | 6 | ATLANTIC | 1,576 | 1,596 | 1,613 |
| BUENA VISTA TOWNSHIP | 6 | ATLANTIC | 2,869 | 2,894 | 3,089 |
| CORBIN CITY | 6 | ATLANTIC | 213 | 215 | 225 |
| EGG HARBOR TOWNSHIP | 6 | ATLANTIC | 12,898 | 13,720 | 18,516 |
| EGG HARBOR CITY | 6 | ATLANTIC | 1,772 | 1,785 | 1,829 |
| ESTELL MANOR CITY | 6 | ATLANTIC | 570 | 585 | 682 |
| FOLSOM BOROUGH | 6 | ATLANTIC | 713 | 711 | 742 |
| GALLOWAY TOWNSHIP | 6 | ATLANTIC | 12,875 | 13,467 | 17,433 |
| HAMILTON TOWNSHIP | 6 | ATLANTIC | 8,349 | 8,855 | 11,240 |
| HAMMONTON TOWN | 6 | ATLANTIC | 5,142 | 5,350 | 6,191 |
| LINWOOD CITY | 6 | ATLANTIC | 2,800 | 2,804 | 2,980 |
| LONGPORT BOROUGH | 6 | ATLANTIC | 1,579 | 1,571 | 1,613 |
| MARGATE CITY | 6 | ATLANTIC | 7,106 | 7,130 | 7,399 |
| MULLICA TOWNSHIP | 6 | ATLANTIC | 2,221 | 2,258 | 2,463 |
| NORTHFIELD CITY | 6 | ATLANTIC | 3,045 | 3,072 | 3,276 |
| PLEASANTVILLE CITY | 6 | ATLANTIC | 7,116 | 7,178 | 7,275 |

| PORT REPUBLIC CITY | 6 | ATLANTIC | 400 | 413 | 454 |
|----------------------------|---|----------|--------|--------|--------|
| SOMERS POUNT CITY | 6 | ATLANTIC | 5,425 | 5,513 | 5,553 |
| VENTNOR CITY | 6 | ATLANTIC | 8,025 | 8,031 | 8,215 |
| WEYMOUTH TOWNSHIP | 6 | ATLANTIC | 973 | 983 | 1,102 |
| ALLENDALE BOROUGH | 1 | BERGEN | 2,200 | 2,200 | 2,377 |
| ALPINE BOROUGH | 1 | BERGEN | 746 | 752 | 928 |
| BERGENFIELD BOROUGH | 1 | BERGEN | 9,158 | 9,141 | 9,155 |
| BOGOTA BOROUGH | 1 | BERGEN | 2,916 | 2,920 | 2,954 |
| CARLSTADT BOROUGH | 1 | BERGEN | 2,463 | 2,457 | 2,450 |
| CLIFFSIDE PARK BOROUGH | 1 | BERGEN | 10,373 | 10,361 | 10,599 |
| CLOSTER BOROUGH | 1 | BERGEN | 2,863 | 2,850 | 2,929 |
| CRESSKILL BOROUGH | 1 | BERGEN | 2,719 | 2,731 | 2,920 |
| DEMAREST BOROUGH | 1 | BERGEN | 1,631 | 1,615 | 1,647 |
| DUMONT BOROUGH | 1 | BERGEN | 6,478 | 6,468 | 6,508 |
| EAST RUTHERFORD BOROUGH | 1 | BERGEN | 3,774 | 3,778 | 3,923 |
| EDGEWATER BOROUGH | 1 | BERGEN | 5,310 | 5,414 | 8,062 |
| ELMWOOD PARK BOROUGH | 1 | BERGEN | 7,233 | 7,232 | 7,353 |
| EMERSON BOROUGH | 1 | BERGEN | 2,413 | 2,409 | 2,557 |

Page 309 40 N.J.R. 5965(a)

| ENGLEWOOD CITY | 1 | BERGEN | 9,648 | 9,643 | 10,160 |
|------------------------------|---|--------|--------|--------|--------|
| ENGLEWOOD CLIFFS BOROUGH | 1 | BERGEN | 1,900 | 1,899 | 1,940 |
| FAIR LAWN BOROUGH | 1 | BERGEN | 12,094 | 12,091 | 12,242 |
| FAIRVIEW BOROUGH | 1 | BERGEN | 5,039 | 5,054 | 5,088 |
| FORT LEE BOROUGH | 1 | BERGEN | 18,104 | 18,115 | 18,752 |
| FRANKLIN LAKES BOROUGH | 1 | BERGEN | 3,454 | 3,578 | 3,867 |
| GARFIELD CITY | 1 | BERGEN | 11,722 | 11,727 | 11,841 |
| GLEN ROCK BOROUGH | 1 | BERGEN | 4,077 | 4,082 | 4,138 |
| HACKENSACK CITY | 1 | BERGEN | 18,892 | 18,875 | 19,194 |
| HARRINGTON PARK BOROUGH | 1 | BERGEN | 1,584 | 1,598 | 1,654 |
| HASBROUCK HEIGHTS BOROUGH | 1 | BERGEN | 4,654 | 4,664 | 4,735 |
| HAWORTH BOROUGH | 1 | BERGEN | 1,150 | 1,149 | 1,171 |
| HILLSDALE BOROUGH | 1 | BERGEN | 3,552 | 3,552 | 3,634 |
| HO-HO-KUS BOROUGH | 1 | BERGEN | 1,473 | 1,469 | 1,487 |
| LEONIA BOROUGH | 1 | BERGEN | 3,154 | 3,163 | 3,118 |
| LITTLE FERRY BOROUGH | 1 | BERGEN | 4,456 | 4,458 | 4,466 |
| LODI BOROUGH | 1 | BERGEN | 9,984 | 10,025 | 10,267 |
| LYNDHURST TOWNSHIP | 1 | BERGEN | 8,112 | 8,114 | 8,250 |

40 N.J.R. 5965(a)

| MAHWAH TOWNSHIP | 1 | BERGEN | 9,847 | 9,917 | 11,042 |
|----------------------------|---|--------|-------|-------|--------|
| MAYWOOD BOROUGH | 1 | BERGEN | 3,772 | 3,770 | 3,772 |
| MIDLAND PARK BOROUGH | 1 | BERGEN | 2,654 | 2,820 | 2,932 |
| MONTVALE BOROUGH | 1 | BERGEN | 2,697 | 2,716 | 2,936 |
| MOONACHIE BOROUGH | 1 | BERGEN | 1,079 | 1,084 | 1,085 |
| NEW MILFORD BOROUGH | 1 | BERGEN | 6,443 | 6,444 | 6,489 |
| NORTH ARLINGTON BOROUGH | 1 | BERGEN | 6,527 | 6,549 | 6,594 |
| NORTHVALE BOROUGH | 1 | BERGEN | 1,613 | 1,615 | 1,643 |
| NORWOOD BOROUGH | 1 | BERGEN | 1,902 | 2,003 | 2,188 |
| OAKLAND BOROUGH | 1 | BERGEN | 4,503 | 4,532 | 4,808 |
| OLD TAPPAN BOROUGH | 1 | BERGEN | 1,827 | 1,809 | 2,168 |
| ORADELL BOROUGH | 1 | BERGEN | 2,836 | 2,834 | 2,864 |
| PALISADES PARK BOROUGH | 1 | BERGEN | 6,577 | 6,689 | 7,251 |
| PARAMUS BOROUGH | 1 | BERGEN | 8,503 | 8,493 | 8,910 |
| PARK RIDGE BOROUGH | 1 | BERGEN | 3,312 | 3,314 | 3,451 |
| RAMSEY BOROUGH | 1 | BERGEN | 5,442 | 5,471 | 5,759 |

| RIDGEFIELD BOROUGH | 1 | BERGEN | 4,157 | 4,148 | 4,161 |
|-------------------------------|---|--------|--------|--------|--------|
| RIDGEFIELD PARK VILLAGE | 1 | BERGEN | 5,134 | 5,133 | 5,237 |
| RIDGEWOOD VILLAGE | 1 | BERGEN | 8,800 | 8,801 | 8,860 |
| RIVER EDGE BOROUGH | 1 | BERGEN | 4,216 | 4,216 | 4,256 |
| RIVER VALE TOWNSHIP | 1 | BERGEN | 3,354 | 3,344 | 3,413 |
| ROCHELLE PARK TOWNSHIP | 1 | BERGEN | 2,117 | 2,120 | 2,142 |
| ROCKLEIGH BOROUGH | 1 | BERGEN | 80 | 80 | 94 |
| RUTHERFORD BOROUGH | 1 | BERGEN | 7,204 | 7,205 | 7,240 |
| SADDLE BROOK TOWNSHIP | 1 | BERGEN | 5,178 | 5,201 | 5,412 |
| SADDLE RIVER BOROUGH | 1 | BERGEN | 1,210 | 1,276 | 1,424 |
| SOUTH HACKENSACK TOWNSHIP | 1 | BERGEN | 833 | 831 | 857 |
| TEANECK TOWNSHIP | 1 | BERGEN | 13,715 | 13,884 | 14,227 |
| TENAFLY BOROUGH | 1 | BERGEN | 4,899 | 4,929 | 4,977 |
| TETERBORO BOROUGH | 1 | BERGEN | 8 | 8 | 6 |
| UPPER SADDLE RIVER BOROUGH | 1 | BERGEN | 2,618 | 2,675 | 2,767 |
| WALDWICK | 1 | BERGEN | 3,493 | 3,503 | 3,609 |

| BOROUGH | | | | | |
|---------------------------|---|-----------------|-------|-------|--------|
| WALLINGTON BOROUGH | 1 | BERGEN | 4,927 | 4,924 | 4,952 |
| WASHINGTON TOWNSHIP | 1 | BERGEN | 3,328 | 3,357 | 3,467 |
| WESTWOOD BOROUGH | 1 | BERGEN | 4,625 | 4,629 | 4,725 |
| WOODCLIFF LAKE BOROUGH | 1 | BERGEN | 1,855 | 1,860 | 2,108 |
| WOOD-RIDGE BOROUGH | 1 | BERGEN | 3,094 | 3,093 | 3,149 |
| WYCKOFF TOWNSHIP | 1 | BERGEN | 5,748 | 5,761 | 6,041 |
| BASS RIVER | 5 | BURLING- TON | 600 | 597 | 617 |
| TOWNSHIP | | | | | |
| BEVERLY CITY | 5 | BURLING- TON | 1,040 | 1,042 | 1,044 |
| BORDENTOWN | 5 | BURLING- TON | 1,906 | 1,937 | 1,968 |
| CITY | | | | | |
| BORDENTOWN | 5 | BURLING- TON | 3,825 | 4,042 | 5,166 |
| TOWNSHIP | | | | | |
| BURLINGTON | 5 | BURLING- TON | 4,202 | 4,238 | 4,385 |
| CITY | | | | | |
| BURLINGTON | 5 | BURLING- TON | 7,974 | 8,106 | 10,766 |
| TOWNSHIP | | | | | |
| CHESTERFIELD | 5 | BURLING- TON | 957 | 972 | 1,515 |
| TOWNSHIP | | | | | |

| CINNAMINSON | 5 | BURLING- TON | 5,269 | 5,346 | 5,881 |
|----------------|---|-----------------|--------|--------|--------|
| TOWNSHIP | | | | | |
| DELANCO | 5 | BURLING- TON | 1,337 | 1,519 | 2,148 |
| TOWNSHIP | | | | | |
| DELRAN | 5 | BURLING- TON | 6,224 | 6,651 | 8,173 |
| TOWNSHIP | | | | | |
| EASTAMPTON | 5 | BURLING- TON | 2,420 | 2,422 | 2,584 |
| TOWNSHIP | | | | | |
| EDGEWATER PARK | 5 | BURLING- TON | 3,374 | 3,423 | 3,605 |
| TOWNSHIP | | | | | |
| EVESHAM | 5 | BURLING- TON | 17,590 | 18,280 | 21,492 |
| TOWNSHIP | | | | | |
| FIELDSBORO | 5 | BURLING- TON | 204 | 204 | 234 |
| BOROUGH | | | | | |
| FLORENCE | 5 | BURLING- TON | 4,555 | 4,594 | 5,392 |
| TOWNSHIP | | | | | |
| HAINESPORT | 5 | BURLING- TON | 2,044 | 2,286 | 3,217 |
| TOWNSHIP | | | | | |
| LUMBERTON | 5 | BURLING- TON | 4,677 | 4,845 | 6,609 |
| TOWNSHIP | | | | | |
| MANSFIELD | 5 | BURLING- TON | 3,161 | 3,460 | 6,367 |
| TOWNSHIP | | | | | |
| MAPLE SHADE | 5 | BURLING- TON | 9,003 | 9,143 | 9,277 |
| TOWNSHIP | | | | | |

| MEDFORD | 5 | BURLING- TON | 8,530 | 8,652 | 9,636 |
|---------------|---|-----------------|--------|--------|--------|
| TOWNSHIP | | | | | |
| MEDFORD LAKES | 5 | BURLING- TON | 1,558 | 1,559 | 1,563 |
| BOROUGH | | | | | |
| MOORESTOWN | 5 | BURLING- TON | 7,539 | 7,624 | 8,746 |
| TOWNSHIP | | | | | |
| MOUNT HOLLY | 5 | BURLING- TON | 4,241 | 4,221 | 4,461 |
| TOWNSHIP | | | | | |
| MOUNT LAUREL | 5 | BURLING- TON | 17,929 | 18,000 | 21,160 |
| TOWNSHIP | | | | | |
| NEW HANOVER | 5 | BURLING- TON | 1,385 | 1,395 | 1,671 |
| TOWNSHIP | | | | | |
| NORTH HANOVER | 5 | BURLING- TON | 2,712 | 2,727 | 2,659 |
| TOWNSHIP | | | | | |
| PALMYRA | 5 | BURLING- TON | 3,370 | 3,367 | 3,554 |
| BOROUGH | | | | | |
| PEMBERTON | 5 | BURLING- TON | 514 | 550 | 585 |
| BOROUGH | | | | | |
| PEMBERTON | 5 | BURLING- TON | 10,843 | 10,861 | 11,273 |
| TOWNSHIP | | | | | |
| RIVERSIDE | 5 | BURLING- TON | 3,123 | 3,146 | 3,161 |
| TOWNSHIP | | | | | |
| RIVERTON | 5 | BURLING- TON | 1,115 | 1,116 | 1,137 |
| BOROUGH | | | | | |

| SHAMONG | 5 | BURLING- TON | 2,237 | 2,268 | 2,535 |
|-------------------------|---|-----------------|--------|--------|--------|
| TOWNSHIP | | 1011 | | | |
| SOUTHAMPTON | 5 | BURLING- TON | 4,928 | 4,973 | 5,373 |
| TOWNSHIP | | | | | |
| SPRINGFIELD | 5 | BURLING- TON | 1,206 | 1,207 | 1,359 |
| TOWNSHIP | | | | | |
| TABERNACLE | 5 | BURLING- TON | 2,424 | 2,452 | 2,610 |
| TOWNSHIP | | | | | |
| WASHINGTON | 5 | BURLING- TON | 171 | 172 | 149 |
| TOWNSHIP | | | | | |
| WESTAMPTON | 5 | BURLING- TON | 2,820 | 3,042 | 4,129 |
| TOWNSHIP | | | | | |
| WILLINGBORO | 5 | BURLING- TON | 11,118 | 11,118 | 11,425 |
| TOWNSHIP | | | | | |
| WOODLAND | 5 | BURLING- TON | 479 | 484 | 545 |
| TOWNSHIP | | | | | |
| WRIGHTSTOWN | 5 | BURLING- TON | 340 | 339 | 345 |
| BOROUGH | | | | | |
| AUDUBON BOROUGH | 5 | CAMDEN | 3,815 | 3,816 | 3,807 |
| AUDUBON PARK BOROUGH | 5 | CAMDEN | 499 | 499 | 506 |
| BARRINGTON BOROUGH | 5 | CAMDEN | 3,173 | 3,178 | 3,395 |
| BELLMAWR BOROUGH | 5 | CAMDEN | 4,573 | 4,569 | 4,566 |

| BERLIN BOROUGH | 5 | CAMDEN | 2,215 | 2,609 | 3,173 |
|---------------------------|---|--------|--------|--------|--------|
| BERLIN TOWNSHIP | 5 | CAMDEN | 2,027 | 2,041 | 2,178 |
| BROOKLAWN BOROUGH | 5 | CAMDEN | 1,025 | 1,025 | 1,146 |
| CAMDEN CITY | 5 | CAMDEN | 28,720 | 29,071 | 28,858 |
| CHERRY HILL TOWNSHIP | 5 | CAMDEN | 27,369 | 27,682 | 28,916 |
| CHESILHURST BOROUGH | 5 | CAMDEN | 541 | 596 | 697 |
| CLEMENTON BOROUGH | 5 | CAMDEN | 2,206 | 2,215 | 2,188 |
| COLLINGSWOOD BOROUGH | 5 | CAMDEN | 6,838 | 6,837 | 6,864 |
| GIBBSBORO BOROUGH | 5 | CAMDEN | 848 | 848 | 935 |
| GLOUCESTER TOWNSHIP | 5 | CAMDEN | 24,902 | 25,255 | 28,326 |
| GLOUCESTER CITY | 5 | CAMDEN | 4,576 | 4,670 | 4,551 |
| HADDON TOWNSHIP | 5 | CAMDEN | 6,421 | 6,427 | 6,494 |
| HADDONFIELD BOROUGH | 5 | CAMDEN | 4,638 | 4,662 | 4,761 |
| HADDON HEIGHTS BOROUGH | 5 | CAMDEN | 3,139 | 3,144 | 3,167 |
| HI-NELLA BOROUGH | 5 | CAMDEN | 495 | 495 | 504 |
| LAUREL SPRINGS BOROUGH | 5 | CAMDEN | 808 | 808 | 797 |
| LAWNSIDE BOROUGH | 5 | CAMDEN | 1,103 | 1,136 | 1,252 |
| LINDENWOLD BOROUGH | 5 | CAMDEN | 8,230 | 8,233 | 8,253 |

40 N.J.R. 5965(a)

| MAGNOLIA BOROUGH | 5 | CAMDEN | 1,839 | 1,838 | 1,841 |
|---------------------------|---|----------|--------|--------|--------|
| MERCHANTVILLE BOROUGH | 5 | CAMDEN | 1,607 | 1,607 | 1,605 |
| MOUNT EPHRAIM BOROUGH | 5 | CAMDEN | 1,876 | 1,963 | 1,989 |
| OAKLYN BOROUGH | 5 | CAMDEN | 1,894 | 1,894 | 1,900 |
| PENNSAUKEN TOWNSHIP | 5 | CAMDEN | 12,997 | 13,007 | 13,321 |
| PINE HILL BOROUGH | 5 | CAMDEN | 4,546 | 4,631 | 5,137 |
| PINE VALLEY BOROUGH | 5 | CAMDEN | 24 | 22 | 166 |
| RUNNEMEDE BOROUGH | 5 | CAMDEN | 3,525 | 3,539 | 3,614 |
| SOMERDALE BOROUGHQ | 5 | CAMDEN | 2,172 | 2,172 | 2,198 |
| STRATFORD BOROUGH | 5 | CAMDEN | 2,847 | 2,845 | 2,847 |
| TAVISTOCK BOROUGH | 5 | CAMDEN | 7 | 7 | 15 |
| VOORHEES TOWNSHIP | 5 | CAMDEN | 11,336 | 11,501 | 12,833 |
| WATERFORD TOWNSHIP | 5 | CAMDEN | 3,722 | 3,759 | 4,018 |
| WINSLOW TOWNSHIP | 5 | CAMDEN | 12,600 | 13,375 | 16,537 |
| WOODLYNNE BOROUGH | 5 | CAMDEN | 1,012 | 1,012 | 1,014 |
| AVALON BOROUGH | 6 | CAPE MAY | 5,261 | 5,249 | 5,184 |
| CAPE MAY CITY | 6 | CAPE MAY | 4,092 | 4,129 | 4,274 |
| CAPE MAY POINT BOROUGH | 6 | CAPE MAY | 521 | 528 | 507 |
| DENNIS TOWNSHIP | 6 | CAPE MAY | 2,383 | 2,418 | 2,673 |
| LOWER TOWNSHIP | 6 | CAPE MAY | 14,227 | 14,357 | 15,083 |
| MIDDLE TOWNSHIP | 6 | CAPE MAY | 8,025 | 8,409 | 9,700 |
| NORTH WILDWOOD CITY | 6 | CAPE MAY | 7,667 | 7,752 | 8,159 |
| OCEAN CITY | 6 | CAPE MAY | 20,547 | 20,558 | 21,579 |
| SEA ISLE CITY | 6 | CAPE MAY | 6,919 | 7,002 | 7,669 |

40 N.J.R. 5965(a)

| STONE HARBOR BOROUGH | 6 | CAPE MAY | 3,421 | 3,403 | 3,466 |
|---------------------------|---|-----------------|--------|--------|--------|
| UPPER TOWNSHIP | 6 | CAPE MAY | 5,606 | 5,761 | 6,188 |
| WEST CAPE MAY BOROUGH | 6 | CAPE MAY | 1,033 | 1,037 | 1,089 |
| WEST WILDWOOD BOROUGH | 6 | CAPE MAY | 791 | 783 | 797 |
| WILDWOOD CITY | 6 | CAPE MAY | 6,547 | 6,719 | 7,263 |
| WILDWOOD CREST BOROUGH | 6 | CAPE MAY | 4,957 | 5,027 | 5,259 |
| WOODBINE BOROUGH | 6 | CAPE MAY | 1,088 | 1,102 | 1,210 |
| BRIDGETON CITY | 6 | CUMBER- LAND | 6,735 | 6,700 | 6,930 |
| COMMERCIAL TOWNSHIP | 6 | CUMBER- LAND | 2,179 | 2,175 | 2,273 |
| DEERFIELD TOWNSHIP | 6 | CUMBER- LAND | 1,094 | 1,106 | 1,279 |
| DOWNE TOWNSHIP | 6 | CUMBER- LAND | 1,135 | 1,133 | 1,163 |
| FAIRFIELD TOWNSHIP | 6 | CUMBER- LAND | 1,925 | 1,939 | 1,965 |
| GREENWICH TOWNSHIP | 6 | CUMBER- LAND | 361 | 362 | 389 |
| HOPEWELL TOWNSHIP | 6 | CUMBER- LAND | 1,735 | 1,755 | 2,012 |
| LAWRENCE TOWNSHIP | 6 | CUMBER- LAND | 1,034 | 1,039 | 1,181 |
| MAURICE RIVER | 6 | CUMBER- LAND | 1,477 | 1,486 | 1,593 |
| TOWNSHIP | | | | | |
| MILLVILLE CITY | 6 | CUMBER- LAND | 10,723 | 10,861 | 11,980 |
| SHILOH BOROUGH | 6 | CUMBER- | 205 | 207 | 218 |

| | | LAND | | | |
|----------------------------|---|-----------------|---------|---------|---------|
| STOW CREEK TOWNSHIP | 6 | CUMBER- LAND | 574 | 582 | 650 |
| UPPER DEERFIELD | 6 | CUMBER- LAND | 2,918 | 2,929 | 3,294 |
| TOWNSHIP | | | | | |
| VINELAND CITY | 6 | CUMBER- LAND | 21,445 | 21,880 | 24,209 |
| BELLEVILLE TOWNSHIP | 2 | ESSEX | 14,153 | 14,161 | 14,366 |
| BLOOMFIELD TOWNSHIP | 2 | ESSEX | 19,512 | 19,506 | 19,816 |
| CALDWELL BOROUGH | 2 | ESSEX | 3,499 | 3,528 | 3,694 |
| CEDAR GROVE TOWNSHIP | 2 | ESSEX | 4,514 | 4,667 | 5,245 |
| CITY OF ORANGE TOWNSHIP | 2 | ESSEX | 12,548 | 12,458 | 12,699 |
| EAST ORANGE CITY | 2 | ESSEX | 28,257 | 27,872 | 27,792 |
| ESSEX FELLS BOROUGH | 2 | ESSEX | 765 | 770 | 831 |
| FAIRFIELD TOWNSHIP | 2 | ESSEX | 2,429 | 2,480 | 2,659 |
| GLEN RIDGE BOROUGH | 2 | ESSEX | 2,489 | 2,488 | 2,617 |
| IRVINGTON TOWNSHIP | 2 | ESSEX | 24,065 | 24,000 | 24,007 |
| LIVINGSTON TOWNSHIP | 2 | ESSEX | 9,602 | 9,729 | 10,666 |
| MAPLEWOOD TOWNSHIP | 2 | ESSEX | 8,650 | 8,664 | 8,934 |
| MILLBURN TOWNSHIP | 2 | ESSEX | 7,152 | 7,121 | 7,223 |
| MONTCLAIR TOWNSHIP | 2 | ESSEX | 15,611 | 15,672 | 16,027 |
| NEWARK CITY | 2 | ESSEX | 101,356 | 103,596 | 109,068 |
| NORTH CALDWELL BOROUGH | 2 | ESSEX | 2,104 | 2,104 | 2,226 |
| NUTLEY TOWNSHIP | 2 | ESSEX | 11,507 | 11,560 | 11,886 |
| ROSELAND BOROUGH | 2 | ESSEX | 2,211 | 2,313 | 2,820 |

| SOUTH ORANGE VILLAGE TOWNSHIP | 2 | ESSEX | 5,929 | 5,935 | 6,219 |
|----------------------------------|---|----------------|--------|--------|--------|
| VERONA TOWNSHIP | 2 | ESSEX | 5,719 | 5,714 | 5,840 |
| WEST CALDWELL TOWNSHIP | 2 | ESSEX | 4,057 | 4,059 | 4,757 |
| WEST ORANGE TOWNSHIP | 2 | ESSEX | 17,224 | 17,263 | 18,532 |
| CLAYTON BOROUGH | 5 | GLOUCESTE R | 2,690 | 2,727 | 3,315 |
| DEPTFORD TOWNSHIP | 5 | GLOUCESTE R | 11,113 | 11,738 | 14,612 |
| EAST GREENWICH | 5 | GLOUCESTE R | 2,385 | 2,555 | 3,769 |
| TOWNSHIP | | | | | |
| ELK TOWNSHIP | 5 | GLOUCESTE R | 1,372 | 1,404 | 1,943 |
| FRANKLIN TOWNSHIP | 5 | GLOUCESTE R | 5,661 | 5,866 | 7,319 |
| GLASSBORO BOROUGH | 5 | GLOUCESTE R | 6,580 | 6,625 | 7,303 |
| GREENWICH TOWNSHIP | 5 | GLOUCESTE R | 1,952 | 1,953 | 2,025 |
| HARRISON TOWNSHIP | 5 | GLOUCESTE R | 3,437 | 3,770 | 6,363 |
| LOGAN TOWNSHIP | 5 | GLOUCESTE R | 2,082 | 2,127 | 2,608 |
| MANTUA TOWNSHIP | 5 | GLOUCESTE R | 5,446 | 5,470 | 7,259 |
| MONROE TOWNSHIP | 5 | GLOUCESTE R | 11,706 | 12,149 | 15,053 |
| NATIONAL PARK | 5 | GLOUCESTE R | 1,167 | 1,184 | 1,220 |
| BOROUGH | | | | | |

Page 321 40 N.J.R. 5965(a)

| NEWFIELD BOROUGH | 5 | GLOUCESTE R | 622 | 622 | 639 |
|------------------------|---|----------------|--------|--------|---------|
| PAULSBORO BOROUGH | 5 | GLOUCESTE R | 2,622 | 2,622 | 2,672 |
| PITMAN BOROUGH | 5 | GLOUCESTE R | 3,659 | 3,658 | 3,774 |
| SOUTH HARRISON | 5 | GLOUCESTE R | 929 | 965 | 1,380 |
| TOWNSHIP | | | | | |
| SWEDESBORO BOROUGJ | 5 | GLOUCESTE R | 867 | 870 | 938 |
| WASHINGTON TOWNSHIP | 5 | GLOUCESTE R | 17,179 | 17,419 | 19,664 |
| WENONAH BOROUGH | 5 | GLOUCESTE R | 863 | 868 | 900 |
| WEST DEPTFORD | 5 | GLOUCESTE R | 8,288 | 8,546 | 10,013 |
| TOWNSHIP | | | | | |
| WESTVILLE BOROUGH | 5 | GLOUCESTE R | 1,938 | 1,937 | 1,945 |
| WOODBURY CITY | 5 | GLOUCESTE R | 4,311 | 4,522 | 4,629 |
| WOODBURY HEIGHTS | 5 | GLOUCESTE R | 1,055 | 1,065 | 1,087 |
| BOROUGH | | | | | |
| WOOLWICH TOWNSHIP | 5 | GLOUCESTE R | 1,595 | 1,972 | 14,241 |
| BAYONNE CITY | 1 | HUDSON | 26,940 | 27,172 | 28,029 |
| EAST NEWARK BOROUGH | 1 | HUDSON | 799 | 803 | 834 |
| GUTTENBERG TOWN | 1 | HUDSON | 4,786 | 4,818 | 4,999 |
| HARRISON TOWN | 1 | HUDSON | 5,249 | 5,284 | 5,631 |
| HOBOKEN CITY | 1 | HUDSON | 19,912 | 19,931 | 21,535 |
| JERSEY CITY | 1 | HUDSON | 94,612 | 95,821 | 100,485 |

Page 322 40 N.J.R. 5965(a)

| KEARNY TOWN | 1 | HUDSON | 13,866 | 13,864 | 14,269 |
|--------------------------|---|----------------|--------|--------|--------|
| NORTH BERGEN TOWNSHIP | 1 | HUDSON | 22,146 | 22,144 | 22,794 |
| SECAUCUS TOWN | 1 | HUDSON | 6,395 | 6,414 | 6,693 |
| UNION CITY | 1 | HUDSON | 24,056 | 24,305 | 24,913 |
| WEEHAWKEN TOWNSHIP | 1 | HUDSON | 6,159 | 6,166 | 6,428 |
| WEST NEW YORK TOWN | 1 | HUDSON | 17,504 | 17,766 | 19,450 |
| ALEXANDRIA TOWNSHIP | 3 | HUNTER- DON | 1,674 | 1,709 | 2,102 |
| BETHLEHEM TOWNSHIP | 3 | HUNTER- DON | 1,373 | 1,388 | 1,635 |
| BLOOMSBURY BOROUGH | 3 | HUNTER- DON | 343 | 343 | 351 |
| CALIFON BOROUGH | 3 | HUNTER- DON | 411 | 412 | 422 |
| CLINTON TOWN | 3 | HUNTER- DON | 1,111 | 1,111 | 1,315 |
| CLINTON TOWNSHIP | 3 | HUNTER- DON | 4,593 | 4,767 | 5,836 |
| DELAWARE TOWNSHIP | 3 | HUNTER- DON | 1,766 | 1,798 | 2,069 |
| EAST AMWELL TOWNSHIP | 3 | HUNTER- DON | 1,649 | 1,660 | 1,893 |
| FLEMINGTON BOROUGH | 3 | HUNTER- DON | 1,877 | 1,877 | 1,891 |
| FRANKLIN TOWNSHIP | 3 | HUNTER- DON | 1,140 | 1,138 | 1,336 |
| FRENCHTOWN BOROUGH | 3 | HUNTER- DON | 634 | 635 | 648 |
| GLEN GARDNER | 3 | HUNTER- DON | 830 | 830 | 846 |
| BOROUGH | | | | | |
| HAMPTON BOROUGH | 3 | HUNTER- DON | 580 | 579 | 577 |

40 N.J.R. 5965(a)

| HIGH BRIDGE | 3 | HUNTER- DON | 1,476 | 1,478 | 1,496 |
|-----------------------|---|----------------|--------|--------|--------|
| BOROUGH | | | | | |
| HOLLAND TOWNSHIP | 3 | HUNTER- DON | 1,978 | 2,022 | 2,234 |
| KINGWOOD TOWNSHIP | 3 | HUNTER- DON | 1,505 | 1,550 | 1,968 |
| LAMBERTVILLE CITY | 3 | HUNTER- DON | 1,965 | 1,965 | 2,282 |
| LEBANON BOROUGH | 3 | HUNTER- DON | 521 | 533 | 542 |
| LEBANON TOWNSHIP | 3 | HUNTER- DON | 2,126 | 2,178 | 2,312 |
| MILFORD BOROUGH | 3 | HUNTER- DON | 486 | 495 | 511 |
| RARITAN TOWNSHIP | 3 | HUNTER- DON | 7,752 | 8,130 | 10,164 |
| READINGTON TOWNSHIP | 3 | HUNTER- DON | 5,992 | 6,028 | 7,125 |
| STOCKTON BOROUGH | 3 | HUNTER- DON | 258 | 260 | 264 |
| TEWKSBURY TOWNSHIP | 3 | HUNTER- DON | 2,137 | 2,232 | 2,638 |
| UNION TOWNSHIP | 3 | HUNTER- DON | 1,789 | 1,811 | 2,085 |
| WEST AMWELL TOWNSHIP | 3 | HUNTER- DON | 1,078 | 1,143 | 1,503 |
| EAST WINDSOR TOWNSHIP | 4 | MERCER | 10,574 | 10,863 | 12,700 |
| EWING TOWNSHIP | 4 | MERCER | 12,997 | 13,212 | 14,005 |
| HAMILTON TOWNSHIP | 4 | MERCER | 35,157 | 35,633 | 37,729 |
| HIGHTSTOWN BOROUGH | 4 | MERCER | 2,127 | 2,129 | 2,170 |
| HOPEWELL BOROUGH | 4 | MERCER | 860 | 860 | 883 |
| HOPEWELL TOWNSHIP | 4 | MERCER | 5,792 | 6,085 | 8,852 |

| LAWRENCE TOWNSHIP | 4 | MERCER | 11,866 | 12,301 | 14,543 |
|-----------------------------|---|-----------|--------|--------|--------|
| PENNINGTON BOROUGH | 4 | MERCER | 1,318 | 1,319 | 1,587 |
| PRINCETON BOROUGH | 4 | MERCER | 3,491 | 3,494 | 3,436 |
| PRINCETON TOWNSHIP | 4 | MERCER | 6,490 | 6,482 | 7,052 |
| TRENTON CITY | 4 | MERCER | 33,687 | 33,546 | 33,608 |
| WASHINGTON TOWNSHIP | 4 | MERCER | 4,591 | 4,854 | 7,230 |
| WEST WINDSOR TOWNSHIP | 4 | MERCER | 8,105 | 8,435 | 11,698 |
| CARTERET BOROUGH | 3 | MIDDLESEX | 7,539 | 7,561 | 8,108 |
| CRANBURY TOWNSHIP | 3 | MIDDLESEX | 1,172 | 1,312 | 1,731 |
| DUNELLEN BOROUGH | 3 | MIDDLESEX | 2,501 | 2,525 | 2,536 |
| EAST BRUNSWICK TOWNSHIP | 3 | MIDDLESEX | 16,766 | 16,826 | 18,117 |
| EDISON TOWNSHIP | 3 | MIDDLESEX | 36,247 | 36,280 | 38,818 |
| HELMETTA BOROUGH | 3 | MIDDLESEX | 815 | 863 | 1,019 |
| HIGHLAND PARK BOROUGH | 3 | MIDDLESEX | 6,133 | 6,135 | 6,343 |
| JAMESBURG BOROUGH | 3 | MIDDLESEX | 2,286 | 2,285 | 2,336 |
| METUCHEN BOROUGH | 3 | MIDDLESEX | 5,306 | 5,345 | 5,595 |
| MIDDLESEX BOROUGH | 3 | MIDDLESEX | 5,117 | 5,115 | 5,219 |
| MILLTOWN BOROUGH | 3 | MIDDLESEX | 2,675 | 2,676 | 2,756 |
| MONROE TOWNSHIP | 3 | MIDDLESEX | 14,615 | 15,631 | 23,691 |
| NEW BRUNSWICK CITY | 3 | MIDDLESEX | 13,678 | 14,189 | 14,734 |
| NORTH BRUNSWICK TOWNSHIP | 3 | MIDDLESEX | 14,608 | 14,901 | 17,226 |
| OLD BRIDGE TOWNSHIP | 3 | MIDDLESEX | 22,715 | 22,938 | 26,101 |
| PERTH AMBOY CITY | 3 | MIDDLESEX | 15,480 | 15,484 | 16,023 |
| PISCATAWAY TOWNSHIP | 3 | MIDDLESEX | 17,180 | 17,218 | 19,268 |

| 3 | MIDDLESEX | 9,386 | 9,454 | 11,268 |
|---|--|--|---|---|
| 3 | MIDDLESEX | 15,496 | 15,910 | 18,237 |
| 3 | MIDDLESEX | 3,151 | 3,277 | 3,610 |
| 3 | MIDDLESEX | 14,946 | 15,067 | 20,110 |
| 3 | MIDDLESEX | 7,845 | 7,878 | 8,554 |
| 3 | MIDDLESEX | 5,877 | 5,885 | 6,391 |
| 3 | MIDDLESEX | 3,217 | 3,232 | 3,407 |
| 3 | MIDDLESEX | 35,533 | 35,799 | 37,392 |
| 4 | MONMOUTH | 6,586 | 6,941 | 7,463 |
| 4 | MONMOUTH | 368 | 370 | 363 |
| 4 | MONMOUTH | 718 | 720 | 759 |
| 4 | MONMOUTH | 7,750 | 7,727 | 7,708 |
| 4 | MONMOUTH | 2,056 | 2,055 | 2,107 |
| 4 | MONMOUTH | 1,397 | 1,367 | 1,331 |
| 4 | MONMOUTH | 4,010 | 4,000 | 3,968 |
| 4 | MONMOUTH | 3,153 | 3,182 | 3,248 |
| 4 | MONMOUTH | 2,145 | 2,164 | 2,267 |
| 4 | MONMOUTH | 3,768 | 3,791 | 4,660 |
| 4 | MONMOUTH | 944 | 948 | 944 |
| 4 | MONMOUTH | 6,400 | 6,476 | 6,806 |
| 4 | MONMOUTH | 686 | 687 | 862 |
| 4 | MONMOUTH | 2,046 | 2,048 | 2,039 |
| 4 | MONMOUTH | 639 | 640 | 645 |
| 4 | MONMOUTH | 3,994 | 4,017 | 4,060 |
| | 3 3 3 3 3 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 | 3 MIDDLESEX 3 MIDDLESEX 3 MIDDLESEX 3 MIDDLESEX 3 MIDDLESEX 3 MIDDLESEX 4 MONMOUTH | 3 MIDDLESEX 3,151 3 MIDDLESEX 3,151 3 MIDDLESEX 14,946 3 MIDDLESEX 14,946 3 MIDDLESEX 7,845 3 MIDDLESEX 3,217 3 MIDDLESEX 35,533 4 MONMOUTH 6,586 4 MONMOUTH 718 4 MONMOUTH 7,750 4 MONMOUTH 2,056 4 MONMOUTH 1,397 4 MONMOUTH 3,153 4 MONMOUTH 3,153 4 MONMOUTH 3,768 4 MONMOUTH 3,768 4 MONMOUTH 944 4 MONMOUTH 944 4 MONMOUTH 944 4 MONMOUTH 944 4 MONMOUTH 6,400 | 3 MIDDLESEX 15,496 15,910 3 MIDDLESEX 3,151 3,277 3 MIDDLESEX 14,946 15,067 3 MIDDLESEX 7,845 7,878 3 MIDDLESEX 5,877 5,885 3 MIDDLESEX 3,217 3,232 3 MIDDLESEX 35,533 35,799 4 MONMOUTH 6,586 6,941 4 MONMOUTH 368 370 4 MONMOUTH 7,727 7,727 4 MONMOUTH 2,056 2,055 4 MONMOUTH 1,397 1,367 4 MONMOUTH 4,000 4,000 4 MONMOUTH 3,153 3,182 4 MONMOUTH 3,768 3,791 4 MONMOUTH 944 948 4 MONMOUTH 6,400 6,476 4 MONMOUTH 6,400 6,476 4 MONMOUTH |

| FREEHOLD TOWNSHIP | 4 | MONMOUTH | 11,805 | 11,885 | 14,084 |
|---------------------------|---|----------|--------|--------|--------|
| HAZLET TOWNSHIP | 4 | MONMOUTH | 7,429 | 7,422 | 7,563 |
| HIGHLANDS BOROUGH | 4 | MONMOUTH | 2,840 | 2,838 | 2,861 |
| HOLMDEL TOWNSHIP | 4 | MONMOUTH | 5,623 | 5,774 | 7,635 |
| HOWELL TOWNSHIP | 4 | MONMOUTH | 17,030 | 17,276 | 20,963 |
| INTERLAKEN BOROUGH | 4 | MONMOUTH | 397 | 396 | 396 |
| KEANSBURG BOROUGH | 4 | MONMOUTH | 4,244 | 4,237 | 4,236 |
| KEYPORT BOROUGH | 4 | MONMOUTH | 3,411 | 3,423 | 3,449 |
| LITTLE SILVER BOROUGH | 4 | MONMOUTH | 2,288 | 2,291 | 2,378 |
| LOCH ARBOUR VILLAGE | 4 | MONMOUTH | 156 | 156 | 165 |
| LONG BRANCH CITY | 4 | MONMOUTH | 14,218 | 14,552 | 15,589 |
| MANALAPAN TOWNSHIP | 4 | MONMOUTH | 12,293 | 12,508 | 15,611 |
| MANASQUAN BOROUGH | 4 | MONMOUTH | 3,531 | 3,534 | 3,648 |
| MARLBORO TOWNSHIP | 4 | MONMOUTH | 12,924 | 13,270 | 17,274 |
| MATAWAN BOROUGH | 4 | MONMOUTH | 3,721 | 3,724 | 3,767 |
| MIDDLETOWN TOWNSHIP | 4 | MONMOUTH | 23,991 | 24,181 | 24,956 |
| MILLSTONE TOWNSHIP | 4 | MONMOUTH | 3,019 | 3,120 | 4,245 |
| MONMOUTH BEACH BOROUGH | 4 | MONMOUTH | 1,998 | 2,014 | 2,036 |
| NEPTUNE TOWNSHIP | 4 | MONMOUTH | 12,566 | 12,586 | 13,141 |
| NEPTUNE CITY BOROUGH | 4 | MONMOUTH | 2,350 | 2,361 | 2,375 |
| OCEAN TOWNSHIP | 4 | MONMOUTH | 10,917 | 11,099 | 12,411 |
| OCEANPORT BOROUGH | 4 | MONMOUTH | 2,135 | 2,144 | 2,217 |
| RED BANK BOROUGH | 4 | MONMOUTH | 5,546 | 5,563 | 5,692 |
| ROOSEVELT BOROUGH | 4 | MONMOUTH | 353 | 352 | 361 |
| RUMSON BOROUGH | 4 | MONMOUTH | 2,599 | 2,595 | 2,592 |
| SEA BRIGHT BOROUGH | 4 | MONMOUTH | 1,208 | 1,202 | 1,214 |

| SEA GIRT BOROUGH | 4 | MONMOUTH | 1,270 | 1,274 | 1,264 |
|--------------------------------|---|----------|--------|--------|--------|
| SHREWSBURY BOROUGH | 4 | MONMOUTH | 1,255 | 1,289 | 1,381 |
| SHREWSBURY TOWNSHIP | 4 | MONMOUTH | 546 | 546 | 543 |
| LAKE COMO BOROUGH | 4 | MONMOUTH | 1,104 | 1,099 | 1,023 |
| SPRING LAKE BOROUGH | 4 | MONMOUTH | 1,935 | 1,940 | 1,942 |
| SPRING LAKE HEIGHTS BOROUGH | 4 | MONMOUTH | 2,948 | 2,950 | 2,966 |
| TINTON FALLS BOROUGH | 4 | MONMOUTH | 6,807 | 7,422 | 9,669 |
| UNION BEACH BOROUGH | 4 | MONMOUTH | 2,246 | 2,247 | 2,349 |
| UPPER FREEHOLD TOWNSHIP | 4 | MONMOUTH | 1,976 | 2,281 | 4,128 |
| WALL TOWNSHIP | 4 | MONMOUTH | 10,526 | 10,568 | 13,128 |
| WEST LONG BRANCH BOROUGH | 4 | MONMOUTH | 2,546 | 2,544 | 2,551 |
| BOONTON TOWN | 2 | MORRIS | 3,366 | 3,380 | 3,534 |
| BOONTON TOWNSHIP | 2 | MORRIS | 1,706 | 1,718 | 2,020 |
| BUTLER BOROUGH | 2 | MORRIS | 3,151 | 3,158 | 3,380 |
| CHATHAM BOROUGH | 2 | MORRIS | 3,227 | 3,212 | 3,241 |
| CHATHAM TOWNSHIP | 2 | MORRIS | 4,129 | 4,157 | 4,405 |
| CHESTER BOROUGH | 2 | MORRIS | 645 | 647 | 701 |
| CHESTER TOWNSHIP | 2 | MORRIS | 2,577 | 2,622 | 3,151 |
| DENVILLE TOWNSHIP | 2 | MORRIS | 6,329 | 6,508 | 7,743 |
| DOVER TOWN | 2 | MORRIS | 5,600 | 5,708 | 5,802 |
| EAST HANOVER TOWNSHIP | 2 | MORRIS | 3,941 | 3,908 | 4,395 |
| FLORHAM PARK BOROUGH | 2 | MORRIS | 3,998 | 4,007 | 4,816 |
| HANOVER TOWNSHIP | 2 | MORRIS | 5,086 | 5,320 | 6,202 |
| HARDING TOWNSHIP | 2 | MORRIS | 1,275 | 1,288 | 1,400 |
| JEFFERSON TOWNSHIP | 2 | MORRIS | 7,783 | 8,098 | 9,106 |

| KINNELON BOROUGH | 2 | MORRIS | 3,198 | 3,238 | 3,559 |
|-----------------------------------|---|--------|--------|--------|--------|
| LINCOLN PARK BOROUGH | 2 | MORRIS | 4,183 | 4,188 | 4,308 |
| LONG HILL TOWNSHIP | 2 | MORRIS | 3,251 | 3,261 | 3,526 |
| MADISON BOROUGH | 2 | MORRIS | 5,652 | 5,631 | 5,961 |
| MENDHAM BOROUGH | 2 | MORRIS | 1,840 | 1,843 | 1,939 |
| MENDHAM TOWNSHIP | 2 | MORRIS | 1,908 | 1,917 | 2,104 |
| MINE HILL TOWNSHIP | 2 | MORRIS | 1,397 | 1,400 | 1,534 |
| MONTVILLE TOWNSHIP | 2 | MORRIS | 7,696 | 7,751 | 9,306 |
| MORRIS TOWNSHIP | 2 | MORRIS | 8,347 | 8,350 | 8,961 |
| MORRIS PLAINS BOROUGH | 2 | MORRIS | 2,003 | 2,006 | 2,058 |
| MORRISTOWN TOWN | 2 | MORRIS | 7,783 | 7,834 | 8,224 |
| MOUNTAIN LAKES BOR- OUGH | 2 | MORRIS | 1,365 | 1,364 | 1,430 |
| MOUNT ARLINGTON BOROUGH | 2 | MORRIS | 2,132 | 2,288 | 3,562 |
| MOUNT OLIVE TOWNSHIP | 2 | MORRIS | 9,823 | 10,026 | 11,272 |
| NETCONG BOROUGH | 2 | MORRIS | 1,084 | 1,085 | 1,073 |
| PARSIPPANY-TROY HILLS TOWNSHIP | 2 | MORRIS | 20,595 | 20,976 | 22,289 |
| PEQUANNOCK TOWNSHIP TOWNSHIP | 2 | MORRIS | 5,119 | 5,263 | 6,551 |
| RANDOLPH TOWNSHIP | 2 | MORRIS | 9,339 | 9,379 | 10,714 |
| RIVERDALE BOROUGH | 2 | MORRIS | 1,000 | 1,020 | 1,300 |
| ROCKAWAY BOROUGH | 2 | MORRIS | 2,506 | 2,507 | 2,629 |
| ROCKAWAY TOWNSHIP | 2 | MORRIS | 9,102 | 9,321 | 10,755 |
| ROXBURY TOWNSHIP | 2 | MORRIS | 8,854 | 8,849 | 10,008 |
| VICTORY GARDENS BOROUGH | 2 | MORRIS | 588 | 588 | 611 |

| WASHINGTON TOWNSHIP | 2 | MORRIS | 6,079 | 6,179 | 6,850 |
|-------------------------------|---|--------|--------|--------|--------|
| WHARTON BOROUGH | 2 | MORRIS | 2,442 | 2,452 | 2,676 |
| BARNEGAT TOWNSHIP | 4 | OCEAN | 6,755 | 7,765 | 11,413 |
| BARNEGAT LIGHT BOROUGH | 4 | OCEAN | 1,212 | 1,212 | 1,247 |
| BAY HEAD BOROUGH | 4 | OCEAN | 1,059 | 1,060 | 1,091 |
| BEACH HAVEN BOROUGH | 4 | OCEAN | 2,502 | 2,506 | 2,413 |
| BEACHWOOD BOROUGH | 4 | OCEAN | 3,634 | 3,629 | 3,767 |
| BERKELEY TOWNSHIP | 4 | OCEAN | 23,220 | 23,476 | 25,539 |
| BRICK TOWNSHIP | 4 | OCEAN | 33,398 | 33,584 | 36,067 |
| TOMS RIVER TOWNSHIP | 4 | OCEAN | 42,551 | 42,797 | 48,036 |
| EAGLESWOOD TOWNSHIP | 4 | OCEAN | 714 | 713 | 818 |
| HARVEY CEDARS BOROUGH | 4 | OCEAN | 1,205 | 1,205 | 1,201 |
| ISLAND HEIGHTS BOROUGH | 4 | OCEAN | 818 | 821 | 891 |
| JACKSON TOWNSHIP | 4 | OCEAN | 16,189 | 17,517 | 24,095 |
| LACEY TOWNSHIP | 4 | OCEAN | 10,954 | 11,090 | 12,125 |
| LAKEHURST BOROUGH | 4 | OCEAN | 962 | 961 | 945 |
| LAKEWOOD TOWNSHIP | 4 | OCEAN | 22,132 | 22,703 | 27,422 |
| LAVALLETTE BOROUGH | 4 | OCEAN | 3,220 | 3,193 | 3,205 |
| LITTLE EGG HARBOR TOWNSHIP | 4 | OCEAN | 8,918 | 9,565 | 12,183 |
| LONG BEACH TOWNSHIP | 4 | OCEAN | 9,181 | 9,320 | 9,537 |
| MANCHESTER TOWNSHIP | 4 | OCEAN | 23,513 | 24,195 | 27,354 |
| MANTOLOKING BOROUGH | 4 | OCEAN | 525 | 529 | 522 |
| OCEAN TOWNSHIP | 4 | OCEAN | 3,217 | 3,542 | 4,635 |
| OCEAN GATE BOROUGH | 4 | OCEAN | 1,152 | 1,152 | 1,182 |
| PINE BEACH BOROUGH | 4 | OCEAN | 877 | 877 | 886 |

| PLUMSTED TOWNSHIP | 4 | OCEAN | 2,891 | 2,939 | 3,542 |
|---------------------------------|---|---------|--------|--------|--------|
| POINT PLEASANT | 4 | OCEAN | 8,393 | 8,420 | 8,568 |
| BOROUGH | | | | | |
| POINT PLEASANT BEACH BOROUGH | 4 | OCEAN | 3,557 | 3,536 | 3,628 |
| SEASIDE HEIGHTS BOROUGH | 4 | OCEAN | 2,822 | 2,860 | 2,964 |
| SEASIDE PARK BOROUGH | 4 | OCEAN | 2,818 | 2,805 | 2,923 |
| SHIP BOTTON BOROUGH | 4 | OCEAN | 2,238 | 2,207 | 2,164 |
| SOUTH TOMS RIVER | 4 | OCEAN | 1,121 | 1,121 | 1,158 |
| STAFFORD TOWNSHIP | 4 | OCEAN | 12,522 | 13,089 | 17,359 |
| SURF CITY BOROUGH | 4 | OCEAN | 2,713 | 2,766 | 3,455 |
| TUCKERTON BOROUGH | 4 | OCEAN | 1,956 | 1,949 | 2,160 |
| BLOOMINGDALE BOROUGH | 1 | PASSAIC | 2,946 | 2,949 | 3,055 |
| CLIFTON CITY | 1 | PASSAIC | 31,381 | 31,854 | 33,207 |
| HALEDON BOROUGH | 1 | PASSAIC | 2,916 | 2,919 | 2,986 |
| HAWTHORNE BOROUGH | 1 | PASSAIC | 7,433 | 7,442 | 7,635 |
| LITTLE FALLS TOWNSHIP | 1 | PASSAIC | 4,811 | 4,804 | 5,003 |
| NORTH HALEDON BOROUGH | 1 | PASSAIC | 2,705 | 2,919 | 3,269 |
| PASSAIC CITY | 1 | PASSAIC | 20,194 | 20,214 | 20,238 |
| PATERSON CITY | 1 | PASSAIC | 47,103 | 47,167 | 46,639 |
| POMPTON LAKES BOROUGH | 1 | PASSAIC | 4,147 | 4,162 | 4,255 |
| PROSPECT PARK | 1 | PASSAIC | 1,887 | 1,887 | 1,887 |
| RINGWOOD BOROUGH | 1 | PASSAIC | 4,286 | 4,326 | 4,492 |
| TOTOWA BOROUGH | 1 | PASSAIC | 3,656 | 3,850 | 4,145 |
| WANAQUE BOROUGH | 1 | PASSAIC | 3,623 | 3,621 | 4,351 |
| WAYNE TOWNSHIP | 1 | PASSAIC | 19,449 | 19,602 | 21,303 |
| WEST MILFORD TOWNSHIP | 1 | PASSAIC | 10,355 | 10,708 | 11,456 |

| WEST PATERSON BOROUGH | 1 | PASSAIC | 4,526 | 4,522 | 4,880 |
|----------------------------------|---|----------|--------|--------|--------|
| ALLOWAY TOWNSHIP | 6 | SALEM | 1,028 | 1,069 | 1,197 |
| CARNEYS POINT TOWNSHIP | 6 | SALEM | 3,324 | 3,438 | 3,751 |
| ELMER BOROUGH | 6 | SALEM | 562 | 562 | 565 |
| ELSINBORO TOWNSHIOP | 6 | SALEM | 524 | 517 | 509 |
| LOWER ALLOWAYS CREEK TOWNSHIP | 6 | SALEM | 749 | 759 | 848 |
| MANNINGTON TOWNSHIP | 6 | SALEM | 577 | 576 | 619 |
| OLDMANS TOWNSHIP | 6 | SALEM | 705 | 715 | 788 |
| PENNS GROVE BOROUGH | 6 | SALEM | 2,071 | 2,071 | 2,070 |
| PENNSVILLE TOWNSHIP | 6 | SALEM | 5,654 | 5,721 | 5,991 |
| PILESGROVE TOWNSHIP | 6 | SALEM | 1,309 | 1,356 | 1,686 |
| PITTSGROVE TOWNSHIP | 6 | SALEM | 3,283 | 3,364 | 3,898 |
| QUINTON TOWNSHIP | 6 | SALEM | 1,155 | 1,166 | 1,248 |
| SALEM CITY | 6 | SALEM | 2,857 | 2,921 | 2,966 |
| UPPER PITTSGROVE TOWNSHIP | 6 | SALEM | 1,296 | 1,303 | 1,406 |
| WOODSTOWN BOROUGH | 6 | SALEM | 1,450 | 1,451 | 1,598 |
| BEDMINSTER TOWNSHIP | 3 | SOMERSET | 4,479 | 4,485 | 4,885 |
| BERNARDS TOWNSHIP | 3 | SOMERSET | 10,010 | 10,052 | 12,110 |
| BERNARDSVILLE BOROUGH | 3 | SOMERSET | 2,888 | 2,904 | 3,174 |
| BOUND BROOK BOROUGH | 3 | SOMERSET | 3,801 | 3,801 | 3,794 |
| BRANCHBURG TOWNSHIP | 3 | SOMERSET | 5,512 | 5,530 | 6,538 |
| BRIDGEWATER TOWNSHIP | 3 | SOMERSET | 16,065 | 16,094 | 18,893 |
| FAR HILLS BOROUGH | 3 | SOMERSET | 394 | 397 | 528 |
| FRANKLIN TOWNSHIP | 3 | SOMERSET | 21,109 | 22,061 | 27,097 |

| GREEN BROOK TOWNSHIP | 3 | SOMERSET | 2,293 | 2,317 | 3,150 |
|------------------------------|---|----------|--------|--------|--------|
| HILLSBORO TOWNSHIP | 3 | SOMERSET | 13,060 | 13,067 | 15,005 |
| MANVILLE BOROUGH | 3 | SOMERSET | 4,283 | 4,279 | 4,341 |
| MILLSTONE BOROUGH | 3 | SOMERSET | 173 | 173 | 181 |
| MONTGOMERY TOWNSHIP | 3 | SOMERSET | 7,065 | 7,396 | 14,061 |
| NORTH PLAINFIELD BOROUGH | 3 | SOMERSET | 7,399 | 7,404 | 7,336 |
| PEAPACK-GLADSTONE BOROUGH | 3 | SOMERSET | 914 | 913 | 1,043 |
| RARITAN BOROUGH | 3 | SOMERSET | 2,656 | 2,665 | 2,918 |
| ROCKY HILL BOROUGH | 3 | SOMERSET | 296 | 296 | 313 |
| SOMERVILLE BOROUGH | 3 | SOMERSET | 4,889 | 4,891 | 4,955 |
| SOUTH BOUND BROOK BOROUGH | 3 | SOMERSET | 1,680 | 1,675 | 1,846 |
| WARREN TOWNSHIP | 3 | SOMERSET | 5,056 | 5,176 | 6,682 |
| WATCHUNG BOROUGH | 3 | SOMERSET | 2,328 | 2,477 | 2,805 |
| ANDOVER BOROUGH | 1 | SUSSEX | 273 | 272 | 292 |
| ANDOVER TOWNSHIP | 1 | SUSSEX | 2,098 | 2,132 | 2,646 |
| BRANCHVILLE BOROUGH | 1 | SUSSEX | 378 | 378 | 381 |
| BYRAM TOWNSHIP | 1 | SUSSEX | 3,155 | 3,191 | 3,474 |
| FRANKFORD TOWNSHIP | 1 | SUSSEX | 2,355 | 2,363 | 2,774 |
| FRANKLIN BOROUGH | 1 | SUSSEX | 2,006 | 2,017 | 2,150 |
| FREDON TOWNSHIP | 1 | SUSSEX | 1,076 | 1,145 | 1,455 |
| GREEN TOWNSHIP | 1 | SUSSEX | 1,159 | 1,192 | 1,485 |
| HAMBURG BOROUGH | 1 | SUSSEX | 1,380 | 1,407 | 1,531 |
| HAMPTON TOWNSHIP | 1 | SUSSEX | 2,099 | 2,135 | 2,486 |
| HARDYSTON TOWNSHIP | 1 | SUSSEX | 3,166 | 3,335 | 4,744 |

| HOPATCONG BOROUGH | 1 | SUSSEX | 6,198 | 6,205 | 6,274 |
|------------------------------|---|--------|--------|--------|--------|
| LAFAYETTE TOWNSHIP | 1 | SUSSEX | 846 | 860 | 1,073 |
| MONTAGUE TOWNSHIP | 1 | SUSSEX | 1,640 | 1,750 | 2,214 |
| NEWTON TOWN | 1 | SUSSEX | 3,553 | 3,574 | 3,916 |
| OGDENSBURG BOROUGH | 1 | SUSSEX | 903 | 903 | 912 |
| SANDYSTON TOWNSHIP | 1 | SUSSEX | 912 | 912 | 1,039 |
| SPARTA TOWNSHIP | 1 | SUSSEX | 6,898 | 7,071 | 7,986 |
| STANHOPE BOROUGH | 1 | SUSSEX | 1,436 | 1,452 | 1,510 |
| STILLWATER TOWNSHIP | 1 | SUSSEX | 2,056 | 2,061 | 2,544 |
| SUSSEX BOROUGH | 1 | SUSSEX | 979 | 981 | 993 |
| VERNON TOWNSHIP | 1 | SUSSEX | 10,168 | 10,274 | 11,482 |
| WALPACK TOWNSHIP TOWNSHIP | 1 | SUSSEX | 34 | 34 | 32 |
| WANTAGE TOWNSHIP | 1 | SUSSEX | 3,860 | 4,001 | 5,111 |
| BERKELEY HEIGHTS TOWNSHIP | 2 | UNION | 4,599 | 4,599 | 5,111 |
| CLARK TOWNSHIP | 2 | UNION | 5,733 | 5,728 | 5,880 |
| CRANFORD TOWNSHIP | 2 | UNION | 8,577 | 8,580 | 8,841 |
| ELIZABETH CITY | 2 | UNION | 43,083 | 43,168 | 44,919 |
| FANWOOD BOROUGH | 2 | UNION | 2,627 | 2,638 | 2,725 |
| GARWOOD BOROUGH | 2 | UNION | 1,786 | 1,790 | 1,821 |
| HILLSIDE TOWNSHIP | 2 | UNION | 7,390 | 7,385 | 7,485 |
| KENILWORTH BOROUGH | 2 | UNION | 2,935 | 2,939 | 3,042 |
| LINDEN CITY | 2 | UNION | 15,722 | 15,774 | 16,559 |
| MOUNTAINSIDE BOROUGH | 2 | UNION | 2,481 | 2,480 | 2,543 |
| NEW PROVIDENCE BOROUGH | 2 | UNION | 4,509 | 4,512 | 4,710 |
| | | | | | |

| PLAINFIELD CITY | 2 | UNION | 16,136 | 16,133 | 16,219 |
|---------------------------|---|--------|--------|--------|--------|
| RAHWAY CITY | 2 | UNION | 10,375 | 10,463 | 13,336 |
| ROSELLE BOROUGH | 2 | UNION | 7,906 | 7,914 | 7,966 |
| ROSELLE PARK BOROUGH | 2 | UNION | 5,254 | 5,254 | 5,277 |
| SCOTCH PLAINS TOWNSHIP | 2 | UNION | 8,473 | 8,409 | 8,745 |
| SPRINGFIELD TOWNSHIP | 2 | UNION | 6,306 | 6,451 | 6,891 |
| SUMMIT CITY | 2 | UNION | 8,141 | 8,154 | 8,340 |
| UNION TOWNSHIP | 2 | UNION | 20,273 | 20,302 | 21,038 |
| WESTFIELD TOWN | 2 | UNION | 10,923 | 10,921 | 11,226 |
| WINFIELD TOWNSHIP | 2 | UNION | 697 | 697 | 708 |
| ALLAMUCHY TOWNSHIP | 2 | WARREN | 1,814 | 1,854 | 2,187 |
| ALPHA BOROUGH | 2 | WARREN | 1,044 | 1,049 | 1,135 |
| BELVIDERE TOWN | 2 | WARREN | 1,172 | 1,172 | 1,276 |
| BLAIRSTOWN TOWNSHIP | 2 | WARREN | 2,209 | 2,239 | 2,791 |
| FRANKLIN TOWNSHIP | 2 | WARREN | 1,108 | 1,128 | 1,407 |
| FRELINGHUYSEN TOWNSHIP | 2 | WARREN | 775 | 795 | 967 |
| GREENWICH TOWNSHIP | 2 | WARREN | 1,862 | 1,872 | 3,847 |
| HACKETTSTOWN TOWN | 2 | WARREN | 3,777 | 3,854 | 4,214 |
| HARDWICK TOWNSHIP | 2 | WARREN | 565 | 581 | 788 |
| HARMONY TOWNSHIP | 2 | WARREN | 1,091 | 1,111 | 1,247 |
| HOPE TOWNSHIP | 2 | WARREN | 776 | 785 | 990 |
| INDEPENDENCE TOWNSHIP | 2 | WARREN | 2,301 | 2,318 | 2,589 |
| KNOWLTON TOWNSHIP | 2 | WARREN | 1,175 | 1,205 | 1,568 |
| LIBERTY TOWNSHIP | 2 | WARREN | 1,116 | 1,141 | 1,329 |
| LOPATCONG TOWNSHIP | 2 | WARREN | 3,078 | 3,265 | 4,652 |

| MANSFIELD TOWNSHIP | 2 | WARREN | 3,328 | 3,34 | 1 | 3,609 |
|-------------------------------------|--------|----------|-----------|-----------|---------|------------|
| OXFORD TOWNSHIP | 2 | WARREN | 1,003 | 1,01 | 1 | 1,197 |
| PHILLIPSBURG TOWN | 2 | WARREN | 6,671 | 6,66 | 4 | 6,837 |
| POHATCONG TOWNSHIP | 2 | WARREN | 1,413 | 1,41 | 8 | 1,516 |
| WASHINGTON BOROUGH | 2 | WARREN | 2,926 | 2,99 | 4 | 3,118 |
| WASHINGTON TOWNSHIP | 2 | WARREN | 2,255 | 2,39 | 4 | 2,830 |
| WHITE TOWNSHIP | 2 | WARREN | 2,089 | 2,16 | 1 | 3,004 |
| NEW JERSEY | | | 3,385,302 | 3,428, | 504 | 3,766,258 |
| | | | | | | |
| Source: Econsult Corporation (2008) | 8) | | | | | |
| Municipality | COAH | County | 2018 | Units | Net | Annual |
| | Region | | Units | Allocated | Changes | Rate |
| | | | Based On | 2018 | 2004 - | of |
| | | | 'S' Curve | | 2018 | Change |
| | | | S carve | | 2010 | 2004 |
| | | | | | | |
| | | | | | | to 2018 |
| ABSECON CITY | 6 | ATLANTIC | 3,323 | 3,525 | 428 | 1.1% |
| ATLANTIC CITY | 6 | ATLANTIC | 20,454 | 20,321 | 160 | 0.1% |
| BRIGANTINE CITY | 6 | ATLANTIC | 9,270 | 9,388 | 127 | 0.1% |
| BUENA BOROUGH | 6 | ATLANTIC | 1,697 | 1,676 | 80 | 0.4% |
| BUENA VISTA TOWNSHIP | 6 | ATLANTIC | 3,086 | 3,171 | 277 | 0.8% |
| CORBIN CITY | 6 | ATLANTIC | 223 | 235 | 20 | 0.7% |
| EGG HARBOR TOWNSHIP | 6 | ATLANTIC | 15,494 | 17,417 | 3,697 | 2.0% |
| EGG HARBOR CITY | 6 | ATLANTIC | 1,830 | 1,902 | 117 | 0.5% |
| ESTELL MANOR CITY | 6 | ATLANTIC | 632 | 675 | 90 | 1.2% |
| FOLSOM BOROUGH | 6 | ATLANTIC | 728 | 769 | 58 | 0.7% |
| GALLOWAY TOWNSHIP | 6 | ATLANTIC | 14,817 | 16,417 | 2,950 | 1.7% |
| HAMILTON TOWNSHIP | 6 | ATLANTIC | 9,708 | 10,700 | 1,845 | 1.6% |

| HAMMONTON TOWN | 6 | ATLANTIC | 5,901 | 6,083 | 733 | 1.1% |
|----------------------------|---|----------|--------|--------|-----|------|
| LINWOOD CITY | 6 | ATLANTIC | 2,848 | 2,986 | 182 | 0.5% |
| LONGPORT BOROUGH | 6 | ATLANTIC | 1,579 | 1,579 | 8 | 0.0% |
| MARGATE CITY | 6 | ATLANTIC | 7,193 | 7,193 | 63 | 0.1% |
| MULLICA TOWNSHIP | 6 | ATLANTIC | 2,371 | 2,503 | 245 | 0.9% |
| NORTHFIELD CITY | 6 | ATLANTIC | 3,169 | 3,351 | 279 | 0.7% |
| PLEASANTVILLE CITY | 6 | ATLANTIC | 7,414 | 7,591 | 413 | 0.5% |
| PORT REPUBLIC CITY | 6 | ATLANTIC | 442 | 459 | 46 | 0.9% |
| SOMERS POINT CITY | 6 | ATLANTIC | 5,536 | 5,631 | 118 | 0.2% |
| VENTNOR CITY | 6 | ATLANTIC | 8,039 | 8,039 | 8 | 0.0% |
| WEYMOUTH TOWNSHIP | 6 | ATLANTIC | 1,032 | 1,097 | 114 | 0.9% |
| ALLENDALE BOROUGH | 1 | BERGEN | 2,264 | 2,468 | 268 | 1.0% |
| ALPINE BOROUGH | 1 | BERGEN | 900 | 1,218 | 466 | 4.1% |
| BERGENFIELD BOROUGH | 1 | BERGEN | 9,179 | 9,345 | 204 | 0.2% |
| BOGOTA BOROUGH | 1 | BERGEN | 2,929 | 2,981 | 61 | 0.2% |
| CARLSTADT BOROUGH | 1 | BERGEN | 2,448 | 2,469 | 12 | 0.0% |
| CLIFFSIDE PARK BOROUGH | 1 | BERGEN | 10,433 | 10,507 | 146 | 0.1% |
| CLOSTER BOROUGH | 1 | BERGEN | 2,894 | 3,000 | 150 | 0.4% |
| CRESSKILL BOROUGH | 1 | BERGEN | 2,826 | 2,895 | 164 | 0.5% |
| DEMAREST BOROUGH | 1 | BERGEN | 1,665 | 1,808 | 193 | 0.9% |
| DUMONT BOROUGH | 1 | BERGEN | 6,467 | 6,556 | 88 | 0.1% |
| EAST RUTHERFORD BOROUGH | 1 | BERGEN | 3,882 | 3,888 | 110 | 0.2% |
| EDGEWATER BOROUGH | 1 | BERGEN | 5,557 | 6,010 | 596 | 0.9% |
| ELMWOOD PARK BOROUGH | 1 | BERGEN | 7,322 | 7,679 | 447 | 0.5% |
| EMERSON BOROUGH | 1 | BERGEN | 2,535 | 2,815 | 406 | 1.3% |

| ENGLEWOOD CITY | 1 | BERGEN | 9,977 | 10,180 | 537 | 0.5% |
|------------------------------|---|--------|--------|--------|-------|------|
| ENGLEWOOD CLIFFS BOROUGH | 1 | BERGEN | 1,948 | 2,123 | 224 | 0.9% |
| FAIR LAWN BOROUGH | 1 | BERGEN | 12,145 | 12,471 | 380 | 0.3% |
| FAIRVIEW BOROUGH | 1 | BERGEN | 5,117 | 5,187 | 133 | 0.2% |
| FORT LEE BOROUGH | 1 | BERGEN | 18,388 | 19,383 | 1,268 | 0.6% |
| FRANKLIN LAKES BOROUGH | 1 | BERGEN | 3,773 | 4,278 | 700 | 1.5% |
| GARFIELD CITY | 1 | BERGEN | 11,787 | 11,938 | 211 | 0.1% |
| GLEN ROCK BOROUGH | 1 | BERGEN | 4,104 | 4,205 | 123 | 0.2% |
| HACKENSACK CITY | 1 | BERGEN | 18,987 | 19,420 | 545 | 0.2% |
| HARRINGTON PARK BOROUGH | 1 | BERGEN | 1,645 | 1,777 | 179 | 0.9% |
| HASBROUCK HEIGHTS BOROUGH | 1 | BERGEN | 4,686 | 4,779 | 115 | 0.2% |
| HAWORTH BOROUGH | 1 | BERGEN | 1,202 | 1,360 | 211 | 1.4% |
| HILLSDALE BOROUGH | 1 | BERGEN | 3,595 | 3,747 | 195 | 0.4% |
| HO-HO-KUS BOROUGH | 1 | BERGEN | 1,496 | 1,603 | 134 | 0.7% |
| LEONIA BOROUGH | 1 | BERGEN | 3,225 | 3,266 | 103 | 0.3% |
| LITTLE FERRY BOROUGH | 1 | BERGEN | 4,488 | 4,587 | 129 | 0.2% |
| LODI BOROUGH | 1 | BERGEN | 10,095 | 10,339 | 314 | 0.3% |
| LYNDHURST TOWNSHIP | 1 | BERGEN | 8,134 | 8,157 | 43 | 0.0% |
| MAHWAH TOWNSHIP | 1 | BERGEN | 10,252 | 11,179 | 1,262 | 1.0% |
| MAYWOOD BOROUGH | 1 | BERGEN | 3,793 | 3,892 | 122 | 0.3% |
| MIDLAND PARK BOROUGH | 1 | BERGEN | 2,822 | 2,822 | 2 | 0.0% |
| MONTVALE BOROUGH | 1 | BERGEN | 2,894 | 3,326 | 610 | 1.7% |
| MOONACHIE BOROUGH | 1 | BERGEN | 1,090 | 1,095 | 11 | 0.1% |
| NEW MILFORD BOROUGH | 1 | BERGEN | 6,469 | 6,572 | 128 | 0.2% |
| NORTH ARLINGTON | 1 | BERGEN | 6,569 | 6,643 | 94 | 0.1% |

| BOROUGH | | | | | | |
|------------------------------|---|--------|--------|--------|-----|------|
| NORTHVALE BOROUGH | 1 | BERGEN | 1,618 | 1,631 | 16 | 0.1% |
| NORWOOD BOROUGH | 1 | BERGEN | 2,013 | 2,067 | 64 | 0.3% |
| OAKLAND BOROUGH | 1 | BERGEN | 4,623 | 4,963 | 431 | 0.8% |
| OLD TAPPAN BOROUGH | 1 | BERGEN | 1,920 | 2,165 | 356 | 1.5% |
| ORADELL BOROUGH | 1 | BERGEN | 2,894 | 3,103 | 269 | 0.8% |
| PALISADES PARK BOROUGH | 1 | BERGEN | 6,855 | 6,855 | 166 | 0.2% |
| PARAMUS BOROUGH | 1 | BERGEN | 8,667 | 9,266 | 773 | 0.7% |
| PARK RIDGE BOROUGH | 1 | BERGEN | 3,344 | 3,444 | 130 | 0.3% |
| RAMSEY BOROUGH | 1 | BERGEN | 5,607 | 6,039 | 568 | 0.8% |
| RIDGEFIELD BOROUGH | 1 | BERGEN | 4,166 | 4,254 | 106 | 0.2% |
| RIDGEFIELD PARK VILLAGE | 1 | BERGEN | 5,274 | 5,612 | 479 | 0.7% |
| RIDGEWOOD VILLAGE | 1 | BERGEN | 8,840 | 9,070 | 269 | 0.3% |
| RIVER EDGE BOROUGH | 1 | BERGEN | 4,235 | 4,318 | 102 | 0.2% |
| RIVER VALE TOWNSHIP | 1 | BERGEN | 3,390 | 3,586 | 242 | 0.6% |
| ROCHELLE PARK TOWNSHIP | 1 | BERGEN | 2,135 | 2,186 | 66 | 0.3% |
| ROCKLEIGH BOROUGH | 1 | BERGEN | 98 | 149 | 69 | 5.3% |
| RUTHERFORD BOROUGH | 1 | BERGEN | 7,237 | 7,424 | 219 | 0.2% |
| SADDLE BROOK TOWNSHIP | 1 | BERGEN | 5,296 | 5,365 | 164 | 0.3% |
| SADDLE RIVER BOROUGH | 1 | BERGEN | 1,407 | 1,761 | 485 | 2.7% |
| SOUTH HACKENSACK TOWNSHIP | 1 | BERGEN | 838 | 851 | 20 | 0.2% |
| TEANECK TOWNSHIP | 1 | BERGEN | 14,021 | 14,363 | 479 | 0.3% |
| TENAFLY BOROUGH | 1 | BERGEN | 4,984 | 5,170 | 241 | 0.4% |
| TETERBORO BOROUGH | 1 | BERGEN | 10 | 8 | 0 | 0.0% |

| UPPER SADDLE RIVER BOROUGH | 1 | BERGEN | 2,706 | 2,910 | 235 | 0.7% |
|-------------------------------|---|-----------------|-------|-------|-------|------|
| WALDWICK | 1 | BERGEN | 3,568 | 3,726 | 223 | 0.5% |
| WALLINGTON BOROUGH | 1 | BERGEN | 4,970 | 5,172 | 248 | 0.4% |
| WASHINGTON TOWNSHIP | 1 | BERGEN | 3,423 | 3,645 | 288 | 0.7% |
| WESTWOOD BOROUGH | 1 | BERGEN | 4,646 | 4,723 | 94 | 0.2% |
| WOODCLIFF LAKE BOROUGH | 1 | BERGEN | 2,013 | 2,343 | 483 | 1.9% |
| WOOD-RIDGE BOROUGH | 1 | BERGEN | 3,146 | 3,342 | 249 | 0.6% |
| WYCKOFF TOWNSHIP | 1 | BERGEN | 5,911 | 6,400 | 639 | 0.9% |
| BASS RIVER TOWNSHIP | 5 | BURLING- TON | 666 | 639 | 42 | 0.6% |
| BEVERLY CITY | 5 | BURLING- TON | 1,070 | 1,089 | 47 | 0.4% |
| BORDENTOWN CITY | 5 | BURLING- TON | 1,999 | 2,022 | 85 | 0.4% |
| BORDENTOWN TOWNSHIP | 5 | BURLING- TON | 4,465 | 4,783 | 741 | 1.4% |
| BURLINGTON CITY | 5 | BURLING- TON | 4,423 | 4,487 | 249 | 0.5% |
| BURLINGTON TOWNSHIP | 5 | BURLING- TON | 8,762 | 9,729 | 1,623 | 1.5% |
| CHESTERFIELD TOWNSHIP | 5 | BURLING- TON | 1,495 | 1,312 | 340 | 2.5% |
| CINNAMINSON TOWNSHIP | 5 | BURLING- TON | 5,696 | 5,843 | 497 | 0.7% |
| DELANCO TOWNSHIP | 5 | BURLING- TON | 1,811 | 1,859 | 340 | 1.7% |
| DELRAN TOWNSHIP | 5 | BURLING- TON | 6,981 | 7,572 | 921 | 1.1% |
| EASTAMPTON TOWNSHIP | 5 | BURLING- TON | 2,598 | 2,633 | 211 | 0.7% |

Page 340 40 N.J.R. 5965(a)

| EDGEWATER PARK | 5 | BURLING- TON | 3,656 | 3,630 | 207 | 0.5% |
|------------------------|---|-----------------|--------|--------|-------|------|
| TOWNSHIP | | | | | | |
| EVESHAM TOWNSHIP | 5 | BURLING- TON | 18,894 | 20,105 | 1,825 | 0.8% |
| FIELDSBORO BOROUGH | 5 | BURLING- TON | 211 | 235 | 31 | 1.2% |
| FLORENCE TOWNSHIP | 5 | BURLING- TON | 5,327 | 5,238 | 644 | 1.1% |
| HAINESPORT TOWNSHIP | 5 | BURLING- TON | 2,432 | 2,744 | 458 | 1.5% |
| LUMBERTON TOWNSHIP | 5 | BURLING- TON | 5,262 | 5,884 | 1,039 | 1.6% |
| MANSFIELD TOWNSHIP | 5 | BURLING- TON | 3,803 | 4,737 | 1,277 | 2.7% |
| MAPLE SHADE TOWNSHIP | 5 | BURLING- TON | 9,324 | 9,561 | 418 | 0.4% |
| MEDFORD TOWNSHIP | 5 | BURLING- TON | 9,111 | 9,504 | 852 | 0.8% |
| MEDFORD LAKES BOROUGH | 5 | BURLING- TON | 1,568 | 1,572 | 13 | 0.1% |
| MOORESTOWN TOWNSHIP | 5 | BURLING- TON | 8,078 | 8,526 | 902 | 0.9% |
| MOUNT HOLLY TOWNSHIP | 5 | BURLING- TON | 4,348 | 4,550 | 329 | 0.6% |
| MOUNT LAUREL TOWNSHIP | 5 | BURLING- TON | 19,059 | 20,266 | 2,266 | 1.0% |
| NEW HANOVER TOWNSHIP | 5 | BURLING- TON | 1,421 | 1,454 | 59 | 0.3% |
| NORTH HANOVER TOWNSHIP | 5 | BURLING- TON | 2,914 | 2,789 | 62 | 0.2% |
| PALMYRA BOROUGH | 5 | BURLING- TON | 3,492 | 3,655 | 288 | 0.7% |
| PEMBERTON BOROUGH | 5 | BURLING- TON | 579 | 582 | 32 | 0.5% |

| PEMBERTON TOWNSHIP | 5 | BURLING- TON | 11,299 | 11,532 | 671 | 0.5% |
|----------------------|---|-----------------|--------|--------|-----|-------|
| RIVERSIDE TOWNSHIP | 5 | BURLING- TON | 3,191 | 3,230 | 84 | 0.2% |
| RIVERTON BOROUGH | 5 | BURLING- TON | 1,133 | 1,167 | 51 | 0.4% |
| SHAMONG TOWNSHIP | 5 | BURLING- TON | 2,349 | 2,477 | 209 | 0.7% |
| SOUTHAMPTON TOWNSHIP | 5 | BURLING- TON | 5,216 | 5,389 | 416 | 0.7% |
| SPRINGFIELD TOWNSHIP | 5 | BURLING- TON | 1,400 | 1,346 | 139 | 0.9% |
| TABERNACLE TOWNSHIP | 5 | BURLING- TON | 2,627 | 2,633 | 181 | 0.6% |
| WASHINGTON TOWNSHIP | 5 | BURLING- TON | 196 | 166 | -6 | -0.3% |
| WESTAMPTON TOWNSHIP | 5 | BURLING- TON | 3,685 | 3,625 | 583 | 1.5% |
| WILLINGBORO TOWNSHIP | 5 | BURLING- TON | 11,555 | 11,773 | 655 | 0.5% |
| WOODLAND TOWNSHIP | 5 | BURLING- TON | 507 | 551 | 67 | 1.1% |
| WRIGHTSTOWN BOROUGH | 5 | BURLING- TON | 667 | 356 | 17 | 0.4% |
| AUDUBON BOROUGH | 5 | CAMDEN | 3,847 | 3,838 | 22 | 0.0% |
| AUDUBON PARK BOROUGH | 5 | CAMDEN | 515 | 516 | 17 | 0.3% |
| BARRINGTON BOROUGH | 5 | CAMDEN | 3,279 | 3,418 | 240 | 0.6% |
| BELLMAWR BOROUGH | 5 | CAMDEN | 4,761 | 4,668 | 99 | 0.2% |
| BERLIN BOROUGH | 5 | CAMDEN | 2,849 | 3,081 | 472 | 1.4% |
| BERLIN TOWNSHIP | 5 | CAMDEN | 2,153 | 2,193 | 152 | 0.6% |
| BROOKLAWN BOROUGH | 5 | CAMDEN | 1,029 | 1,035 | 10 | 0.1% |
| CAMDEN CITY | 5 | CAMDEN | 29,996 | 29,695 | 624 | 0.2% |

| CHERRY HILL TOWNSHIP | 5 | CAMDEN | 28,520 | 29,204 | 1,522 | 0.4% |
|---------------------------|---|--------|--------|--------|-------|-------|
| CHESILHURST BOROUGH | 5 | CAMDEN | 698 | 684 | 88 | 1.2% |
| CLEMENTON BOROUGH | 5 | CAMDEN | 2,314 | 2,241 | 26 | 0.1% |
| COLLINGSWOOD BOROUGH | 5 | CAMDEN | 6,882 | 6,952 | 115 | 0.1% |
| GIBBSBORO BOROUGH | 5 | CAMDEN | 942 | 938 | 90 | 0.8% |
| GLOUCESTER TOWNSHIP | 5 | CAMDEN | 26,879 | 28,127 | 2,872 | 0.9% |
| GLOUCESTER CITY | 5 | CAMDEN | 4,764 | 4,663 | -7 | 0.0% |
| HADDON TOWNSHIP | 5 | CAMDEN | 6,481 | 6,551 | 124 | 0.2% |
| HADDONFIELD BOROUGH | 5 | CAMDEN | 4,707 | 4,737 | 75 | 0.1% |
| HADDON HEIGHTS BOROUGH | 5 | CAMDEN | 3,194 | 3,230 | 86 | 0.2% |
| HI-NELLA BOROUGH | 5 | CAMDEN | 517 | 513 | 18 | 0.3% |
| LAUREL SPRINGS BOROUGH | 5 | CAMDEN | 830 | 817 | 9 | 0.1% |
| LAWNSIDE BOROUGH | 5 | CAMDEN | 1,262 | 1,250 | 114 | 0.8% |
| LINDENWOLD BOROUGH | 5 | CAMDEN | 8,530 | 8,438 | 205 | 0.2% |
| MAGNOLIA BOROUGH | 5 | CAMDEN | 1,893 | 1,883 | 45 | 0.2% |
| MERCHANTVILLE BOROUGH | 5 | CAMDEN | 1,612 | 1,609 | 2 | 0.0% |
| MOUNT EPHRAIM BOROUGH | 5 | CAMDEN | 1,956 | 1,956 | -7 | 0.0% |
| OAKLYN BOROUGH | 5 | CAMDEN | 1,899 | 1,905 | 11 | 0.0% |
| PENNSAUKEN TOWNSHIP | 5 | CAMDEN | 13,379 | 13,546 | 539 | 0.3% |
| PINE HILL BOROUGH | 5 | CAMDEN | 4,906 | 5,098 | 467 | 0.8% |
| PINE VALLEY BOROUGH | 5 | CAMDEN | 176 | 92 | 70 | 12.7% |
| RUNNEMEDE BOROUGH | 5 | CAMDEN | 3,635 | 3,674 | 135 | 0.3% |
| SOMERDALE BOROUGH | 5 | CAMDEN | 2,247 | 2,242 | 70 | 0.3% |
| STRATFORD BOROUGH | 5 | CAMDEN | 2,900 | 2,911 | 66 | 0.2% |
| TAVISTOCK BOROUGH | 5 | CAMDEN | 23 | 12 | 5 | 4.6% |
| | | | | | | |

| VOORHEES TOWNSHIP | 5 | CAMDEN | 12,174 | 12,757 | 1,256 | 0.9% |
|-----------------------------|---|-----------------|--------|--------|-------|------|
| WATERFORD TOWNSHIP | 5 | CAMDEN | 3,976 | 4,043 | 284 | 0.6% |
| WINSLOW TOWNSHIP | 5 | CAMDEN | 15,327 | 15,954 | 2,579 | 1.5% |
| WOODLYNNE BOROUGH | 5 | CAMDEN | 1,012 | 1,012 | 0 | 0.0% |
| AVALON BOROUGH | 6 | CAPE MAY | 5,267 | 5,239 | -10 | 0.0% |
| CAPE MAY CITY | 6 | CAPE MAY | 4,145 | 4,145 | 16 | 0.0% |
| CAPE MAY POINT BOROUGH | 6 | CAPE MAY | 534 | 526 | -2 | 0.0% |
| DENNIS TOWNSHIP | 6 | CAPE MAY | 2,566 | 2,438 | 20 | 0.1% |
| LOWER TOWNSHIP | 6 | CAPE MAY | 14,552 | 14,445 | 88 | 0.1% |
| MIDDLE TOWNSHIP | 6 | CAPE MAY | 9,015 | 8,769 | 360 | 0.3% |
| NORTH WILDWOOD CITY | 6 | CAPE MAY | 7,865 | 7,865 | 113 | 0.1% |
| OCEAN CITY | 6 | CAPE MAY | 20,816 | 20,816 | 258 | 0.1% |
| SEA ISLE CITY | 6 | CAPE MAY | 7,167 | 7,167 | 165 | 0.2% |
| STONE HARBOR BOROUGH | 6 | CAPE MAY | 3,402 | 3,402 | -1 | 0.0% |
| UPPER TOWNSHIP | 6 | CAPE MAY | 6,146 | 5,870 | 109 | 0.2% |
| WEST CAPE MAY BOROUGH | 6 | CAPE MAY | 1,041 | 1,034 | -3 | 0.0% |
| WEST WILDWOOD BOROUGH | 6 | CAPE MAY | 797 | 797 | 14 | 0.1% |
| WILDWOOD CITY | 6 | CAPE MAY | 6,956 | 6,956 | 237 | 0.3% |
| WILDWOOD CREST BOR- OUGH | 6 | CAPE MAY | 5,106 | 5,106 | 79 | 0.1% |
| WOODBINE BOROUGH | 6 | CAPE MAY | 1,161 | 1,107 | 5 | 0.0% |
| BRIDGETON CITY | 6 | CUMBER- LAND | 7,167 | 7,053 | 353 | 0.4% |
| COMMERCIAL TOWNSHIP | 6 | CUMBER- LAND | 2,336 | 2,301 | 126 | 0.5% |
| DEERFIELD TOWNSHIP | 6 | CUMBER- LAND | 1,291 | 1,251 | 145 | 1.0% |
| DOWNE TOWNSHIP | 6 | CUMBER- LAND | 1,206 | 1,184 | 51 | 0.4% |

Page 344 40 N.J.R. 5965(a)

| FAIRFIELD TOWNSHIP | 6 | CUMBER- LAND | 2,161 | 2,022 | 83 | 0.3% |
|----------------------------|---|-----------------|--------|--------|-------|------|
| GREENWICH TOWNSHIP | 6 | CUMBER- LAND | 399 | 390 | 28 | 0.6% |
| HOPEWELL TOWNSHIP | 6 | CUMBER- LAND | 1,988 | 1,968 | 213 | 1.0% |
| LAWRENCE TOWNSHIP | 6 | CUMBER- LAND | 1,204 | 1,162 | 123 | 0.9% |
| MAURICE RIVER | 6 | CUMBER- LAND | 1,628 | 1,631 | 145 | 0.8% |
| TOWNSHIP | | | | | | |
| MILLVILLE CITY | 6 | CUMBER- LAND | 12,342 | 11,876 | 1,015 | 0.7% |
| SHILOH BOROUGH | 6 | CUMBER- LAND | 229 | 223 | 16 | 0.6% |
| STOW CREEK TOWNSHIP | 6 | CUMBER- LAND | 652 | 641 | 59 | 0.8% |
| UPPER DEERFIELD | 6 | CUMBER- LAND | 3,337 | 3,251 | 322 | 0.9% |
| TOWNSHIP | | | | | | |
| VINELAND CITY | 6 | CUMBER- LAND | 24,222 | 23,796 | 1,916 | 0.7% |
| BELLEVILLE TOWNSHIP | 2 | ESSEX | 14,418 | 14,472 | 311 | 0.2% |
| BLOOMFIELD TOWNSHIP | 2 | ESSEX | 19,922 | 19,947 | 441 | 0.2% |
| CALDWELL BOROUGH | 2 | ESSEX | 3,637 | 3,640 | 112 | 0.3% |
| CEDAR GROVE TOWNSHIP | 2 | ESSEX | 5,216 | 5,010 | 343 | 0.6% |
| CITY OF ORANGE TOWNSHIP | 2 | ESSEX | 12,710 | 12,854 | 396 | 0.3% |
| EAST ORANGE CITY | 2 | ESSEX | 28,756 | 28,442 | 570 | 0.2% |
| ESSEX FELLS BOROUGH | 2 | ESSEX | 881 | 814 | 44 | 0.5% |
| FAIRFIELD TOWNSHIP | 2 | ESSEX | 2,561 | 2,614 | 134 | 0.4% |
| GLEN RIDGE BOROUGH | 2 | ESSEX | 2,568 | 2,568 | 80 | 0.3% |

Page 345

| IRVINGTON TOWNSHIP | 2 | ESSEX | 24,309 | 24,365 | 365 | 0.1% |
|----------------------------------|---|----------------|---------|---------|-------|------|
| LIVINGSTON TOWNSHIP | 2 | ESSEX | 10,340 | 10,378 | 649 | 0.5% |
| MAPLEWOOD TOWNSHIP | 2 | ESSEX | 8,784 | 8,905 | 241 | 0.2% |
| MILLBURN TOWNSHIP | 2 | ESSEX | 7,387 | 7,302 | 181 | 0.2% |
| MONTCLAIR TOWNSHIP | 2 | ESSEX | 15,913 | 16,024 | 352 | 0.2% |
| NEWARK CITY | 2 | ESSEX | 108,111 | 107,624 | 4,028 | 0.3% |
| NORTH CALDWELL BOR- OUGH | 2 | ESSEX | 2,329 | 2,214 | 110 | 0.4% |
| NUTLEY TOWNSHIP | 2 | ESSEX | 11,702 | 11,879 | 319 | 0.2% |
| ROSELAND BOROUGH | 2 | ESSEX | 2,561 | 2,597 | 284 | 1.0% |
| SOUTH ORANGE VILLAGE TOWNSHIP | 2 | ESSEX | 6,082 | 6,093 | 158 | 0.2% |
| VERONA TOWNSHIP | 2 | ESSEX | 5,985 | 5,871 | 157 | 0.2% |
| WEST CALDWELL TOWNSHIP | 2 | ESSEX | 4,474 | 4,538 | 479 | 0.9% |
| WEST ORANGE TOWNSHIP | 2 | ESSEX | 19,028 | 18,197 | 934 | 0.4% |
| CLAYTON BOROUGH | 5 | GLOUCESTE R | 3,121 | 3142 | 415 | 1.2% |
| DEPTFORD TOWNSHIP | 5 | GLOUCESTE R | 13,168 | 13315 | 1,577 | 1.1% |
| EAST GREENWICH | 5 | GLOUCESTE R | 3,030 | 2977 | 422 | 1.3% |
| TOWNSHIP | | | | | | |
| ELK TOWNSHIP | 5 | GLOUCESTE R | 2,460 | 1697 | 293 | 1.6% |
| FRANKLIN TOWNSHIP | 5 | GLOUCESTE R | 7,334 | 6725 | 859 | 1.1% |
| GLASSBORO BOROUGH | 5 | GLOUCESTE R | 7,106 | 7310 | 685 | 0.8% |
| GREENWICH TOWNSHIP | 5 | GLOUCESTE R | 2,023 | 2125 | 172 | 0.7% |

Page 346

| HARRISON TOWNSHIP | 5 | GLOUCESTE R | 4,435 | 4813 | 1,043 | 2.1% |
|-----------------------|---|----------------|--------|-------|-------|------|
| LOGAN TOWNSHIP | 5 | GLOUCESTE R | 2,655 | 2443 | 316 | 1.2% |
| MANTUA TOWNSHIP | 5 | GLOUCESTE R | 7,238 | 6603 | 1,133 | 1.6% |
| MONROE TOWNSHIP | 5 | GLOUCESTE R | 13,949 | 13728 | 1,579 | 1.0% |
| NATIONAL PARK BOROUGH | 5 | GLOUCESTE R | 1,225 | 1259 | 75 | 0.5% |
| NEWFIELD BOROUGH | 5 | GLOUCESTE R | 638 | 668 | 46 | 0.6% |
| PAULSBORO BOROUGH | 5 | GLOUCESTE R | 2,693 | 2800 | 178 | 0.5% |
| PITMAN BOROUGH | 5 | GLOUCESTE R | 3,781 | 3919 | 261 | 0.6% |
| SOUTH HARRISON | 5 | GLOUCESTE R | 1,133 | 1180 | 215 | 1.7% |
| TOWNSHIP | | | | | | |
| SWEDESBORO BOROUGH | 5 | GLOUCESTE R | 920 | 950 | 80 | 0.7% |
| WASHINGTON TOWNSHIP | 5 | GLOUCESTE R | 18,284 | 19190 | 1,771 | 0.8% |
| WENONAH BOROUGH | 5 | GLOUCESTE R | 906 | 928 | 60 | 0.6% |
| WEST DEPTFORD | 5 | GLOUCESTE R | 9,566 | 9541 | 995 | 0.9% |
| TOWNSHIP | | | | | | |
| WESTVILLE BOROUGH | 5 | GLOUCESTE R | 1,999 | 2051 | 114 | 0.5% |
| WOODBURY CITY | 5 | GLOUCESTE R | 4,527 | 4527 | 5 | 0.0% |
| WOODBURY HEIGHTS | 5 | GLOUCESTE R | 1,109 | 1130 | 65 | 0.5% |
| BOROUGH | | | | | | |

| WOOLWICH TOWNSHIP | 5 | GLOUCESTE R | 3,003 | 3003 | 1,031 | 3.6% |
|-----------------------|---|----------------|--------|--------|-------|------|
| BAYONNE CITY | 1 | HUDSON | 27,864 | 27,374 | 202 | 0.1% |
| EAST NEWARK BOROUGH | 1 | HUDSON | 815 | 815 | 12 | 0.1% |
| GUTTENBERG TOWN | 1 | HUDSON | 4,826 | 4,826 | 8 | 0.0% |
| HARRISON TOWN | 1 | HUDSON | 5,494 | 5,453 | 169 | 0.3% |
| HOBOKEN CITY | 1 | HUDSON | 20,585 | 20,585 | 654 | 0.3% |
| JERSEY CITY | 1 | HUDSON | 97,945 | 97,164 | 1,343 | 0.1% |
| KEARNY TOWN | 1 | HUDSON | 13,977 | 13,924 | 60 | 0.0% |
| NORTH BERGEN TOWNSHIP | 1 | HUDSON | 22,482 | 22,187 | 43 | 0.0% |
| SECAUCUS TOWN | 1 | HUDSON | 6,603 | 6,595 | 181 | 0.2% |
| UNION CITY | 1 | HUDSON | 24,419 | 24,339 | 34 | 0.0% |
| WEEHAWKEN TOWNSHIP | 1 | HUDSON | 6,343 | 6,177 | 11 | 0.0% |
| WEST NEW YORK TOWN | 1 | HUDSON | 18,222 | 18,222 | 456 | 0.2% |
| ALEXANDRIA TOWNSHIP | 3 | HUNTER- DON | 1,987 | 2,003 | 294 | 1.3% |
| BETHLEHEM TOWNSHIP | 3 | HUNTER- DON | 1,480 | 1,582 | 194 | 1.1% |
| BLOOMSBURY BOROUGH | 3 | HUNTER- DON | 360 | 363 | 20 | 0.5% |
| CALIFON BOROUGH | 3 | HUNTER- DON | 428 | 436 | 24 | 0.5% |
| CLINTON TOWN | 3 | HUNTER- DON | 1,136 | 1,171 | 60 | 0.4% |
| CLINTON TOWNSHIP | 3 | HUNTER- DON | 5,272 | 5,489 | 722 | 1.2% |
| DELAWARE TOWNSHIP | 3 | HUNTER- DON | 2,225 | 2,025 | 227 | 1.0% |
| EAST ANWELL TOWNSHIP | 3 | HUNTER- DON | 2,020 | 1,873 | 213 | 1.0% |
| FLEMINGTON BOROUGH | 3 | HUNTER- | 1,936 | 1,970 | 93 | 0.4% |

| | | DON | | | | |
|----------------------|---|----------------|-------|-------|-------|------|
| FRANKLIN TOWNSHIP | 3 | HUNTER- DON | 1,470 | 1,322 | 184 | 1.3% |
| FRENCHTOWN BOROUGH | 3 | HUNTER- DON | 675 | 672 | 37 | 0.5% |
| GLEN GARDNER BOROUGH | 3 | HUNTER- DON | 842 | 861 | 31 | 0.3% |
| HAMPTON BOROUGH | 3 | HUNTER- DON | 646 | 604 | 25 | 0.4% |
| HIGH BRIDGE BOROUGH | 3 | HUNTER- DON | 1,514 | 1,557 | 79 | 0.4% |
| HOLLAND TOWNSHIP | 3 | HUNTER- DON | 2,247 | 2,226 | 204 | 0.8% |
| KINGWOOD TOWNSHIP | 3 | HUNTER- DON | 2,010 | 1,834 | 284 | 1.4% |
| LAMBERTVILLE CITY | 3 | HUNTER- DON | 2,172 | 2,217 | 252 | 1.0% |
| LEBANON BOROUGH | 3 | HUNTER- DON | 540 | 543 | 10 | 0.2% |
| LEBANON TOWNSHIP | 3 | HUNTER- DON | 2,289 | 2,331 | 153 | 0.6% |
| MILFORD BOROUGH | 3 | HUNTER- DON | 534 | 523 | 28 | 0.5% |
| RARITAN TOWNSHIP | 3 | HUNTER- DON | 9,459 | 9,490 | 1,360 | 1.3% |
| READINGTON TOWNSHIP | 3 | HUNTER- DON | 6,966 | 6,936 | 908 | 1.2% |
| STOCKTON BOROUGH | 3 | HUNTER- DON | 269 | 273 | 13 | 0.4% |
| TEWKSBURY TOWNSHIP | 3 | HUNTER- DON | 2,535 | 2,540 | 308 | 1.1% |
| UNION TOWNSHIP | 3 | HUNTER- DON | 1,943 | 2,045 | 234 | 1.0% |
| WEST AMWELL TOWNSHIP | 3 | HUNTER- DON | 1,456 | 1,378 | 235 | 1.6% |

| EAST WINDSOR TOWNSHIP | 4 | MERCER | 11,963 | 12,012 | 1,149 | 0.8% |
|-----------------------|---|-----------|--------|--------|-------|------|
| EWING TOWNSHIP | 4 | MERCER | 14,416 | 13,915 | 703 | 0.4% |
| HAMILTON TOWNSHIP | 4 | MERCER | 36,961 | 37,485 | 1,852 | 0.4% |
| HIGHTSTOWN BOROUGH | 4 | MERCER | 2,189 | 2,193 | 64 | 0.2% |
| HOPEWELL BOROUGH | 4 | MERCER | 889 | 885 | 25 | 0.2% |
| HOPEWELL TOWNSHIP | 4 | MERCER | 7,586 | 7,559 | 1,474 | 1.8% |
| LAWRENCE TOWNSHIP | 4 | MERCER | 13,173 | 13,622 | 1,321 | 0.9% |
| PENNINGTON BOROUGH | 4 | MERCER | 1,342 | 1,387 | 68 | 0.4% |
| PRINCETON BOROUGH | 4 | MERCER | 3,569 | 3,492 | -2 | 0.0% |
| PRINCETON TOWNSHIP | 4 | MERCER | 6,846 | 7,042 | 560 | 0.7% |
| TRENTON CITY | 4 | MERCER | 33,897 | 34,467 | 921 | 0.2% |
| WASHINGTON TOWNSHIP | 4 | MERCER | 5,701 | 6,019 | 1,165 | 1.8% |
| WEST WINDSOR TOWNSHIP | 4 | MERCER | 9,880 | 10,285 | 1,850 | 1.7% |
| CARTERET BOROUGH | 3 | MIDDLESEX | 7,881 | 8,096 | 535 | 0.6% |
| CRANBURY TOWNSHIP | 3 | MIDDLESEX | 1,575 | 1,536 | 224 | 1.3% |
| DUNELLEN BOROUGH | 3 | MIDDLESEX | 2,524 | 2,524 | -1 | 0.0% |
| EAST BRUNSWICK | 3 | MIDDLESEX | 18,090 | 18,103 | 1,277 | 0.6% |
| TOWNSHIP | | | | | | |
| EDISON TOWNSHIP | 3 | MIDDLESEX | 38,396 | 38,853 | 2,573 | 0.6% |
| HELMETTA BOROUGH | 3 | MIDDLESEX | 881 | 905 | 42 | 0.4% |
| HIGHLAND PARK BOROUGH | 3 | MIDDLESEX | 6,455 | 6,409 | 274 | 0.4% |
| JAMESBURG BOROUGH | 3 | MIDDLESEX | 2,343 | 2,398 | 113 | 0.4% |
| METUCHEN BOROUGH | 3 | MIDDLESEX | 5,546 | 5,586 | 241 | 0.4% |
| MIDDLESEX BOROUGH | 3 | MIDDLESEX | 5,229 | 5,327 | 212 | 0.3% |
| MILLTOWN BOROUGH | 3 | MIDDLESEX | 2,755 | 2,804 | 128 | 0.4% |
| MONROE TOWNSHIP | 3 | MIDDLESEX | 19,187 | 20,176 | 4,545 | 2.1% |

| NEW BRUNSWICK CITY | 3 | MIDDLESEX | 14,992 | 14,783 | 594 | 0.3% |
|-------------------------------|---|-----------|--------|--------|-------|------|
| NORTH BRUNSWICK TOWNSHIP | 3 | MIDDLESEX | 16,356 | 16,625 | 1,724 | 0.9% |
| OLD BRIDGE TOWNSHIP | 3 | MIDDLESEX | 25,808 | 25,400 | 2,462 | 0.9% |
| PERTH AMBOY CITY | 3 | MIDDLESEX | 16,354 | 16,161 | 677 | 0.4% |
| PISCATAWAY TOWNSHIP | 3 | MIDDLESEX | 19,198 | 18,922 | 1,704 | 0.8% |
| PLAINSBORO TOWNSHIP | 3 | MIDDLESEX | 10,810 | 10,787 | 1,333 | 1.1% |
| SAYREVILLE BOROUGH | 3 | MIDDLESEX | 18,026 | 17,641 | 1,731 | 0.9% |
| SOUTH AMBOY CITY | 3 | MIDDLESEX | 3,519 | 3,516 | 239 | 0.6% |
| SOUTH BRUNSWICK TOWNSHIP | 3 | MIDDLESEX | 17,987 | 18,187 | 3,120 | 1.6% |
| SOUTH PLAINFIELD BOROUGH | 3 | MIDDLESEX | 8,125 | 8,396 | 518 | 0.5% |
| SOUTH RIVER BOROUGH | 3 | MIDDLESEX | 6,179 | 6,358 | 473 | 0.6% |
| SPOTSWOOD BOROUGH | 3 | MIDDLESEX | 3,401 | 3,422 | 190 | 0.5% |
| WOODBRIDGE TOWNSHIP | 3 | MIDDLESEX | 37,693 | 37,799 | 2,000 | 0.5% |
| ABERDEEN TOWNSHIP | 4 | MONMOUTH | 7,100 | 7,186 | 245 | 0.3% |
| ALLENHURST BOROUGH | 4 | MONMOUTH | 369 | 369 | -1 | 0.0% |
| ALLENTOWN BOROUGH | 4 | MONMOUTH | 731 | 757 | 37 | 0.4% |
| ASBURY PARK CITY | 4 | MONMOUTH | 7,754 | 7,927 | 200 | 0.2% |
| ATLANTIC HIGHLANDS BOROUGH | 4 | MONMOUTH | 2,094 | 2,136 | 81 | 0.3% |
| AVON-BY-THE-SEA BOROUGH | 4 | MONMOUTH | 1,347 | 1,386 | 19 | 0.1% |
| BELMAR BOROUGH | 4 | MONMOUTH | 3,959 | 4,026 | 26 | 0.1% |
| BRADLEY BEACH BOROUGH | 4 | MONMOUTH | 3,237 | 3,237 | 55 | 0.1% |
| BRIELLE BOROUGH | 4 | MONMOUTH | 2,203 | 2,255 | 91 | 0.3% |
| COLTS NECK TOWNSHIP | 4 | MONMOUTH | 4,225 | 4,070 | 279 | 0.6% |

| DEAL BOROUGH | 4 | MONMOUTH | 962 | 968 | 20 | 0.2% |
|-----------------------------|---|----------|--------|--------|-------|------|
| EATONTOWN BOROUGH | 4 | MONMOUTH | 6,752 | 6,754 | 278 | 0.4% |
| ENGLISHTOWN BOROUGH | 4 | MONMOUTH | 732 | 777 | 90 | 1.0% |
| FAIR HAVEN BOROUGH | 4 | MONMOUTH | 2,042 | 2,061 | 13 | 0.1% |
| FARMINGDALE BOROUGH | 4 | MONMOUTH | 644 | 652 | 12 | 0.2% |
| FREEHOLD BOROUGH | 4 | MONMOUTH | 4,060 | 4,151 | 134 | 0.3% |
| FREEHOLD TOWNSHIP | 4 | MONMOUTH | 13,463 | 13,105 | 1,220 | 0.8% |
| HAZLET TOWNSHIP | 4 | MONMOUTH | 7,583 | 7,673 | 251 | 0.3% |
| HIGHLANDS BOROUGH | 4 | MONMOUTH | 2,916 | 2,909 | 71 | 0.2% |
| HOLMDEL TOWNSHIP | 4 | MONMOUTH | 6,062 | 6,551 | 777 | 1.1% |
| HOWELL TOWNSHIP | 4 | MONMOUTH | 19,967 | 19,256 | 1,980 | 0.9% |
| INTERLAKEN BOROUGH | 4 | MONMOUTH | 394 | 397 | 1 | 0.0% |
| KEANSBURG BOROUGH | 4 | MONMOUTH | 4,245 | 4,255 | 18 | 0.0% |
| KEYPORT BOROUGH | 4 | MONMOUTH | 3,443 | 3,518 | 95 | 0.2% |
| LITTLE SILVER BOROUGH | 4 | MONMOUTH | 2,303 | 2,350 | 59 | 0.2% |
| LOCH ARBOUR VILLAGE | 4 | MONMOUTH | 157 | 157 | 1 | 0.1% |
| LONG BRANCH CITY | 4 | MONMOUTH | 15,106 | 15,145 | 593 | 0.3% |
| MANALAPAN TOWNSHIP | 4 | MONMOUTH | 13,835 | 14,039 | 1,531 | 1.0% |
| MANASQUAN BOROUGH | 4 | MONMOUTH | 3,561 | 3,561 | 27 | 0.1% |
| MARLBORO TOWNSHIP | 4 | MONMOUTH | 14,450 | 15,074 | 1,804 | 1.1% |
| MATAWAN BOROUGH | 4 | MONMOUTH | 3,773 | 3,810 | 86 | 0.2% |
| MIDDLETOWN TOWNSHIP | 4 | MONMOUTH | 24,950 | 25,330 | 1,149 | 0.4% |
| MILLSTONE TOWNSHIP | 4 | MONMOUTH | 3,706 | 3,608 | 488 | 1.2% |
| MONMOUTH BEACH BOR- OUGH | 4 | MONMOUTH | 2,004 | 2,004 | -10 | 0.0% |
| NEPTUNE TOWNSHIP | 4 | MONMOUTH | 12,929 | 13,107 | 521 | 0.3% |
| NEPTUNE CITY BOROUGH | 4 | MONMOUTH | 2,370 | 2,424 | 63 | 0.2% |

| OCEAN TOWNSHIP | 4 | MONMOUTH | 11,767 | 11,905 | 806 | 0.6% |
|--------------------------------|---|----------|--------|--------|-------|------|
| OCEANPORT BOROUGH | 4 | MONMOUTH | 2,236 | 2,228 | 84 | 0.3% |
| RED BANK BOROUGH | 4 | MONMOUTH | 5,601 | 5,669 | 106 | 0.2% |
| ROOSEVELT BOROUGH | 4 | MONMOUTH | 366 | 365 | 13 | 0.3% |
| RUMSON BOROUGH | 4 | MONMOUTH | 2,608 | 2,667 | 72 | 0.2% |
| SEA BRIGHT BOROUGH | 4 | MONMOUTH | 1,222 | 1,222 | 20 | 0.1% |
| SEA GIRT BOROUGH | 4 | MONMOUTH | 1,284 | 1,305 | 31 | 0.2% |
| SHREWSBURY BOROUGH | 4 | MONMOUTH | 1,308 | 1,341 | 52 | 0.3% |
| SHREWSBURY TOWNSHIP | 4 | MONMOUTH | 548 | 558 | 12 | 0.2% |
| LAKE COMO BOROUGH | 4 | MONMOUTH | 1,069 | 1,104 | 5 | 0.0% |
| SPRING LAKE BOROUGH | 4 | MONMOUTH | 1,935 | 1,945 | 5 | 0.0% |
| SPRING LAKE HEIGHTS BOROUGH | 4 | MONMOUTH | 2,972 | 3,038 | 88 | 0.2% |
| TINTON FALLS BOROUGH | 4 | MONMOUTH | 8,047 | 8,087 | 665 | 0.7% |
| UNION BEACH BOROUGH | 4 | MONMOUTH | 2,268 | 2,332 | 85 | 0.3% |
| UPPER FREEHOLD TOWNSHIP | 4 | MONMOUTH | 2,909 | 2,849 | 568 | 1.9% |
| WALL TOWNSHIP | 4 | MONMOUTH | 12,279 | 11,888 | 1,320 | 1.0% |
| WEST LONG BRANCH BOROUGH | 4 | MONMOUTH | 2,571 | 2,614 | 70 | 0.2% |
| BOONTON TOWN | 2 | MORRIS | 3,496 | 3,594 | 214 | 0.5% |
| BOONTON TOWNSHIP | 2 | MORRIS | 1,846 | 1,989 | 271 | 1.2% |
| BUTLER BOROUGH | 2 | MORRIS | 3,248 | 3,369 | 211 | 0.5% |
| CHATHAM BOROUGH | 2 | MORRIS | 3,272 | 3,394 | 182 | 0.5% |
| CHATHAM TOWNSHIP | 2 | MORRIS | 4,453 | 4,594 | 437 | 0.8% |
| CHESTER BOROUGH | 2 | MORRIS | 655 | 669 | 22 | 0.3% |
| CHESTER TOWNSHIP | 2 | MORRIS | 2,754 | 2,890 | 268 | 0.8% |
| DENVILLE TOWNSHIP | 2 | MORRIS | 6,944 | 7,337 | 829 | 1.0% |

| DOVER TOWN | 2 | MORRIS | 5,794 | 5,892 | 184 | 0.3% |
|-----------------------------------|---|--------|--------|--------|-------|------|
| EAST HANOVER TOWNSHIP | 2 | MORRIS | 4,129 | 4,479 | 571 | 1.1% |
| FLORHAM PARK BOROUGH | 2 | MORRIS | 4,429 | 5,058 | 1,051 | 2.0% |
| HANOVER TOWNSHIP | 2 | MORRIS | 5,448 | 5,585 | 265 | 0.4% |
| HARDING TOWNSHIP | 2 | MORRIS | 1,509 | 1,457 | 169 | 1.0% |
| JEFFERSON TOWNSHIP | 2 | MORRIS | 8,556 | 8,904 | 806 | 0.8% |
| KINNELON BOROUGH | 2 | MORRIS | 3,381 | 3,502 | 264 | 0.7% |
| LINCOLN PARK BOROUGH | 2 | MORRIS | 4,300 | 4,467 | 279 | 0.5% |
| LONG HILL TOWNSHIP | 2 | MORRIS | 3,462 | 3,672 | 411 | 1.0% |
| MADISON BOROUGH | 2 | MORRIS | 6,220 | 6,158 | 527 | 0.7% |
| MENDHAM BOROUGH | 2 | MORRIS | 1,955 | 2,046 | 203 | 0.9% |
| MENDHAM TOWNSHIP | 2 | MORRIS | 2,117 | 2,189 | 272 | 1.1% |
| MINE HILL TOWNSHIP | 2 | MORRIS | 1,444 | 1,507 | 107 | 0.6% |
| MONTVILLE TOWNSHIP | 2 | MORRIS | 8,166 | 8,738 | 987 | 1.0% |
| MORRIS TOWNSHIP | 2 | MORRIS | 8,830 | 9,332 | 982 | 0.9% |
| MORRIS PLAINS BOROUGH | 2 | MORRIS | 2,101 | 2,187 | 181 | 0.7% |
| MORRISTOWN TOWN | 2 | MORRIS | 7,954 | 8,142 | 308 | 0.3% |
| MOUNTAIN LAKES BOR- OUGH | 2 | MORRIS | 1,437 | 1,514 | 150 | 0.9% |
| MOUNT ARLINGTON BOROUGH | 2 | MORRIS | 2,611 | 2,611 | 323 | 1.1% |
| MOUNT OLIVE TOWNSHIP | 2 | MORRIS | 10,531 | 11,053 | 1,027 | 0.8% |
| NETCONG BOROUGH | 2 | MORRIS | 1,160 | 1,157 | 72 | 0.5% |
| PARSIPPANY-TROY HILLS TOWNSHIP | 2 | MORRIS | 21,444 | 21,879 | 903 | 0.4% |
| PEQUANNOCK TOWNSHIP | 2 | MORRIS | 5,781 | 5,781 | 518 | 0.8% |
| RANDOLPH TOWNSHIP | 2 | MORRIS | 9,861 | 10,554 | 1,175 | 1.0% |
| RIVERDALE BOROUGH | 2 | MORRIS | 1,202 | 1,272 | 252 | 1.9% |

| ROCKAWAY BOROUGH | 2 | MORRIS | 2,577 | 2,671 | 164 | 0.5% |
|-------------------------------|---|--------|--------|--------|-------|------|
| ROCKAWAY TOWNSHIP | 2 | MORRIS | 10,066 | 10,942 | 1,621 | 1.3% |
| ROXBURY TOWNSHIP | 2 | MORRIS | 9,188 | 9,660 | 811 | 0.7% |
| VICTORY GARDENS BOROUGH | 2 | MORRIS | 604 | 627 | 39 | 0.5% |
| WASHINGTON TOWNSHIP | 2 | MORRIS | 6,471 | 6,781 | 602 | 0.8% |
| WHARTON BOROUGH | 2 | MORRIS | 2,558 | 2,712 | 260 | 0.8% |
| BARNEGAT TOWNSHIP | 4 | OCEAN | 8,621 | 8,850 | 1,085 | 1.1% |
| BARNEGAT LIGHT BOROUGH | 4 | OCEAN | 1,214 | 1,214 | 2 | 0.0% |
| BAY HEAD BOROUGH | 4 | OCEAN | 1,052 | 1,064 | 4 | 0.0% |
| BEACH HAVEN BOROUGH | 4 | OCEAN | 2,549 | 2,549 | 43 | 0.1% |
| BEACHWOOD BOROUGH | 4 | OCEAN | 3,650 | 3,838 | 209 | 0.5% |
| BERKELEY TOWNSHIP | 4 | OCEAN | 23,989 | 25,636 | 2,160 | 0.7% |
| BRICK TOWNSHIP | 4 | OCEAN | 34,271 | 37,310 | 3,726 | 0.9% |
| TOMS RIVER TOWNSHIP | 4 | OCEAN | 45,923 | 51,403 | 8,606 | 1.5% |
| EAGLESWOOD TOWNSHIP | 4 | OCEAN | 819 | 876 | 163 | 1.7% |
| HARVEY CEDARS BOROUGH | 4 | OCEAN | 1,205 | 1,205 | 0 | 0.0% |
| ISLAND HEIGHTS BOROUGH | 4 | OCEAN | 830 | 857 | 36 | 0.4% |
| JACKSON TOWNSHIP | 4 | OCEAN | 19,952 | 23,402 | 5,885 | 2.4% |
| LACEY TOWNSHIP | 4 | OCEAN | 11,536 | 12,866 | 1,776 | 1.2% |
| LAKEHURST BOROUGH | 4 | OCEAN | 1,019 | 1,053 | 92 | 0.8% |
| LAKEWOOD TOWNSHIP | 4 | OCEAN | 24,664 | 27,318 | 4,615 | 1.6% |
| LAVALLETTE BOROUGH | 4 | OCEAN | 3,171 | 3,220 | 27 | 0.1% |
| LITTLE EGG HARBOR TOWNSHIP | 4 | OCEAN | 10,233 | 10,683 | 1,118 | 0.9% |
| LONG BEACH TOWNSHIP | 4 | OCEAN | 9,345 | 9,345 | 25 | 0.0% |

| MANCHESTER TOWNSHIP | 4 | OCEAN | 26,002 | 29,256 | 5,061 | 1.6% |
|---------------------------------|---|---------|--------|--------|-------|------|
| MANTOLOKING BOROUGH | 4 | OCEAN | 526 | 526 | -3 | 0.0% |
| OCEAN TOWNSHIP | 4 | OCEAN | 3,918 | 4,000 | 458 | 1.0% |
| OCEAN GATE BOROUGH | 4 | OCEAN | 1,156 | 1,156 | 4 | 0.0% |
| PINE BEACH BOROUGH | 4 | OCEAN | 886 | 937 | 60 | 0.6% |
| PLUMSTED TOWNSHIP | 4 | OCEAN | 3,339 | 3,709 | 770 | 2.0% |
| POINT PLEASANT BOROUGH | 4 | OCEAN | 8,437 | 8,474 | 54 | 0.1% |
| POINT PLEASANT BEACH BOROUGH | 4 | OCEAN | 3,508 | 3,573 | 37 | 0.1% |
| SEASIDE HEIGHTS BOROUGH | 4 | OCEAN | 2,949 | 2,949 | 89 | 0.3% |
| SEASIDE PARK BOROUGH | 4 | OCEAN | 2,804 | 2,830 | 25 | 0.1% |
| SHIP BOTTON BOROUGH | 4 | OCEAN | 2,195 | 2,238 | 31 | 0.1% |
| SOUTH TOMS RIVER BOROUGH | 4 | OCEAN | 1,163 | 1,266 | 145 | 1.0% |
| STAFFORD TOWNSHIP | 4 | OCEAN | 13,683 | 14,758 | 1,669 | 1.0% |
| SURF CITY BOROUGH | 4 | OCEAN | 2,813 | 2,813 | 47 | 0.1% |
| TUCKERTON BOROUGH | 4 | OCEAN | 2,159 | 2,338 | 389 | 1.5% |
| BLOOMINGDALE BOROUGH | 1 | PASSAIC | 3,137 | 3,249 | 300 | 0.8% |
| CLIFTON CITY | 1 | PASSAIC | 32,726 | 34,979 | 3,125 | 0.8% |
| HALEDON BOROUGH | 1 | PASSAIC | 3,001 | 3,145 | 226 | 0.6% |
| HAWTHORNE BOROUGH | 1 | PASSAIC | 7,608 | 8,028 | 586 | 0.6% |
| LITTLE FALLS TOWNSHIP | 1 | PASSAIC | 4,950 | 5,072 | 268 | 0.5% |
| NORTH HALEDON BOROUGH | 1 | PASSAIC | 3,019 | 3,192 | 273 | 0.7% |
| PASSAIC CITY | 1 | PASSAIC | 20,309 | 20,783 | 569 | 0.2% |
| PATERSON CITY | 1 | PASSAIC | 48,226 | 48,237 | 1,070 | 0.2% |
| POMPTON LAKES BOROUGH | 1 | PASSAIC | 4,210 | 4,374 | 212 | 0.4% |
| PROSPECT PARK BOROUGH | 1 | PASSAIC | 1,898 | 1,942 | 55 | 0.2% |

| RINGWOOD BOROUGH | 1 | PASSAIC | 4,393 | 4,517 | 191 | 0.4% |
|----------------------------------|---|----------|--------|--------|-------|------|
| TOTOWA BOROUGH | 1 | PASSAIC | 4,086 | 4,394 | 544 | 1.1% |
| WANAQUE BOROUGH | 1 | PASSAIC | 3,990 | 3,990 | 369 | 0.8% |
| WAYNE TOWNSHIP | 1 | PASSAIC | 20,364 | 22,472 | 2,870 | 1.1% |
| WEST MILFORD TOWNSHIP | 1 | PASSAIC | 10,819 | 11,074 | 366 | 0.3% |
| WEST PATERSON BOROUGH | 1 | PASSAIC | 5,017 | 5,242 | 720 | 1.2% |
| ALLOWAY TOWNSHIP | 6 | SALEM | 1,223 | 1,178 | 109 | 0.8% |
| CARNEYS POINT TOWNSHIP | 6 | SALEM | 3,803 | 3,719 | 281 | 0.7% |
| ELMER BOROUGH | 6 | SALEM | 572 | 575 | 13 | 0.2% |
| ELSINBORO TOWNSHIP | 6 | SALEM | 525 | 525 | 8 | 0.1% |
| LOWER ALLOWAYS CREEK TOWNSHIP | 6 | SALEM | 814 | 837 | 78 | 0.8% |
| MANNINGTON TOWNSHIP | 6 | SALEM | 644 | 618 | 42 | 0.6% |
| OLDMANS TOWNSHIP | 6 | SALEM | 789 | 781 | 66 | 0.7% |
| PENNS GROVE BOROUGH | 6 | SALEM | 2,091 | 2,113 | 42 | 0.2% |
| PENNSVILLE TOWNSHIP | 6 | SALEM | 5,919 | 6,030 | 309 | 0.4% |
| PILESGROVE TOWNSHIP | 6 | SALEM | 1,577 | 1,615 | 259 | 1.5% |
| PITTSGROVE TOWNSHIP | 6 | SALEM | 3,684 | 3,798 | 434 | 1.0% |
| QUINTON TOWNSHIP | 6 | SALEM | 1,280 | 1,248 | 82 | 0.6% |
| SALEM CITY | 6 | SALEM | 2,978 | 3,000 | 79 | 0.2% |
| UPPER PITTSGROVE TOWNSHIP | 6 | SALEM | 1,414 | 1,402 | 99 | 0.6% |
| WOODSTOWN BOROUGH | 6 | SALEM | 1,566 | 1,594 | 143 | 0.8% |
| BEDMINSTER TOWNSHIP | 3 | SOMERSET | 4,941 | 4,943 | 458 | 0.8% |
| BERNARDS TOWNSHIP | 3 | SOMERSET | 10,360 | 10,776 | 724 | 0.6% |
| BERNARDSVILLE BOROUGH | 3 | SOMERSET | 3,126 | 3,196 | 292 | 0.8% |
| BOUND BROOK BOROUGH | 3 | SOMERSET | 3,838 | 3,832 | 31 | 0.1% |

| BRANCHBURG TOWNSHIP | 3 | SOMERSET | 6,206 | 6,354 | 824 | 1.2% |
|------------------------------|---|----------|--------|--------|-------|------|
| BRIDGEWATER TOWNSHIP | 3 | SOMERSET | 17,448 | 18,543 | 2,449 | 1.2% |
| FAR HILLS BOROUGH | 3 | SOMERSET | 474 | 489 | 92 | 1.8% |
| FRANKLIN TOWNSHIP | 3 | SOMERSET | 24,765 | 25,644 | 3,583 | 1.3% |
| GREEN BROOK TOWNSHIP | 3 | SOMERSET | 2,465 | 2,613 | 296 | 1.0% |
| HILLSBORO TOWNSHIP | 3 | SOMERSET | 14,679 | 14,875 | 1,808 | 1.1% |
| MANVILLE BOROUGH | 3 | SOMERSET | 4,346 | 4,433 | 154 | 0.3% |
| MILLSTONE BOROUGH | 3 | SOMERSET | 180 | 187 | 14 | 0.7% |
| MONTGOMERY TOWNSHIP | 3 | SOMERSET | 8,476 | 9,534 | 2,138 | 2.1% |
| NORTH PLAINFIELD BOROUGH | 3 | SOMERSET | 7,634 | 7,547 | 143 | 0.2% |
| PEAPACK-GLADSTONE BOROUGH | 3 | SOMERSET | 1,062 | 1,018 | 105 | 0.9% |
| RARITAN BOROUGH | 3 | SOMERSET | 2,890 | 2,938 | 273 | 0.8% |
| ROCKY HILL BOROUGH | 3 | SOMERSET | 326 | 321 | 25 | 0.7% |
| SOMERVILLE BOROUGH | 3 | SOMERSET | 5,035 | 5,171 | 280 | 0.5% |
| SOUTH BOUND BROOK BOROUGH | 3 | SOMERSET | 1,798 | 1,798 | 123 | 0.6% |
| WARREN TOWNSHIP | 3 | SOMERSET | 5,693 | 6,166 | 990 | 1.5% |
| WATCHUNG BOROUGH | 3 | SOMERSET | 2,780 | 2,608 | 131 | 0.4% |
| ANDOVER BOROUGH | 1 | SUSSEX | 337 | 302 | 30 | 0.9% |
| ANDOVER TOWNSHIP | 1 | SUSSEX | 2,711 | 2,588 | 456 | 1.6% |
| BRANCHVILLE BOROUGH | 1 | SUSSEX | 399 | 400 | 22 | 0.5% |
| BYRAM TOWNSHIP | 1 | SUSSEX | 3,482 | 3,564 | 373 | 0.9% |
| FRANKFORD TOWNSHIP | 1 | SUSSEX | 2,965 | 2,779 | 416 | 1.4% |
| FRANKLIN BOROUGH | 1 | SUSSEX | 2,270 | 2,221 | 204 | 0.8% |
| FREDON TOWNSHIP | 1 | SUSSEX | 1,484 | 1,403 | 258 | 1.7% |
| GREEN TOWNSHIP | 1 | SUSSEX | 1,410 | 1,442 | 250 | 1.6% |

| HAMBURG BOROUGH | 1 | SUSSEX | 1,431 | 1,500 | 93 | 0.5% |
|------------------------------|---|--------|--------|--------|-------|------|
| HAMPTON TOWNSHIP | 1 | SUSSEX | 2,689 | 2,481 | 346 | 1.3% |
| HARDYSTON TOWNSHIP | 1 | SUSSEX | 3,757 | 3,946 | 611 | 1.4% |
| HOPATCONG BOROUGH | 1 | SUSSEX | 6,347 | 6,591 | 386 | 0.5% |
| LAFAYETTE TOWNSHIP | 1 | SUSSEX | 1,045 | 1,046 | 186 | 1.6% |
| MONTAGUE TOWNSHIP | 1 | SUSSEX | 2,263 | 2,136 | 386 | 1.7% |
| NEWTON TOWN | 1 | SUSSEX | 3,914 | 3,983 | 409 | 0.9% |
| OGDENSBURG BOROUGH | 1 | SUSSEX | 909 | 932 | 29 | 0.3% |
| SANDYSTON TOWNSHIP | 1 | SUSSEX | 1,137 | 1,055 | 143 | 1.2% |
| SPARTA TOWNSHIP | 1 | SUSSEX | 7,321 | 7,805 | 734 | 0.8% |
| STANHOPE BOROUGH | 1 | SUSSEX | 1,493 | 1,568 | 116 | 0.6% |
| STILLWATER TOWNSHIP | 1 | SUSSEX | 2,593 | 2,508 | 447 | 1.6% |
| SUSSEX BOROUGH | 1 | SUSSEX | 996 | 1,038 | 57 | 0.5% |
| VERNON TOWNSHIP | 1 | SUSSEX | 10,963 | 11,702 | 1,428 | 1.1% |
| WALPACK TOWNSHIP | 1 | SUSSEX | 34 | 34 | 0 | 0.0% |
| WANTAGE TOWNSHIP | 1 | SUSSEX | 5,125 | 4,939 | 938 | 1.8% |
| BERKELEY HEIGHTS TOWNSHIP | 2 | UNION | 4,967 | 5,361 | 762 | 1.3% |
| CLARK TOWNSHIP | 2 | UNION | 5,971 | 6,105 | 377 | 0.5% |
| CRANFORD TOWNSHIP | 2 | UNION | 8,882 | 9,191 | 611 | 0.6% |
| ELIZABETH CITY | 2 | UNION | 44,804 | 46,567 | 3,399 | 0.6% |
| FANWOOD BOROUGH | 2 | UNION | 2,683 | 2,725 | 87 | 0.3% |
| GARWOOD BOROUGH | 2 | UNION | 1,802 | 1,805 | 15 | 0.1% |
| HILLSIDE TOWNSHIP | 2 | UNION | 7,524 | 7,690 | 305 | 0.3% |
| KENILWORTH BOROUGH | 2 | UNION | 3,014 | 3,091 | 152 | 0.4% |
| LINDEN CITY | 2 | UNION | 16,337 | 16,990 | 1,216 | 0.6% |

| MOUNTAINSIDE BOROUGH | 2 | UNION | 2,593 | 2,639 | 159 | 0.5% |
|---------------------------|---|--------|--------|--------|-------|------|
| NEW PROVIDENCE BOROUGH | 2 | UNION | 4,708 | 4,872 | 360 | 0.6% |
| PLAINFIELD CITY | 2 | UNION | 16,293 | 16,507 | 374 | 0.2% |
| RAHWAY CITY | 2 | UNION | 12,159 | 12,159 | 1,696 | 1.3% |
| ROSELLE BOROUGH | 2 | UNION | 7,988 | 8,079 | 165 | 0.2% |
| ROSELLE PARK BOROUGH | 2 | UNION | 5,295 | 5,355 | 101 | 0.2% |
| SCOTCH PLAINS TOWNSHIP | 2 | UNION | 8,690 | 9,072 | 663 | 0.6% |
| SPRINGFIELD TOWNSHIP | 2 | UNION | 6,851 | 7,158 | 707 | 0.9% |
| SUMMIT CITY | 2 | UNION | 8,535 | 8,654 | 500 | 0.5% |
| UNION TOWNSHIP | 2 | UNION | 20,969 | 21,824 | 1,522 | 0.6% |
| WESTFIELD TOWN | 2 | UNION | 11,214 | 11,622 | 701 | 0.5% |
| WINFIELD TOWNSHIP | 2 | UNION | 718 | 735 | 38 | 0.4% |
| ALLAMUCHY TOWNSHIP | 2 | WARREN | 2,070 | 2,122 | 268 | 1.1% |
| ALPHA BOROUGH | 2 | WARREN | 1,134 | 1,150 | 101 | 0.8% |
| BELVIDERE TOWN | 2 | WARREN | 1,326 | 1,294 | 122 | 0.8% |
| BLAIRSTOWN TOWNSHIP | 2 | WARREN | 2,979 | 2,641 | 402 | 1.4% |
| FRANKLIN TOWNSHIP | 2 | WARREN | 1,426 | 1,348 | 220 | 1.5% |
| FRELINGHUYSEN TOWNSHIP | 2 | WARREN | 1,028 | 921 | 126 | 1.2% |
| GREENWICH TOWNSHIP | 2 | WARREN | 2,063 | 2,394 | 522 | 2.1% |
| HACKETTSTOWN TOWN | 2 | WARREN | 3,905 | 3,934 | 80 | 0.2% |
| HARDWICK TOWNSHIP | 2 | WARREN | 832 | 711 | 130 | 1.7% |
| HARMONY TOWNSHIP | 2 | WARREN | 1,300 | 1,240 | 129 | 0.9% |
| HOPE TOWNSHIP | 2 | WARREN | 1,014 | 931 | 146 | 1.4% |
| INDEPENDENCE TOWNSHIP | 2 | WARREN | 2,439 | 2,577 | 259 | 0.9% |
| KNOWLTON TOWNSHIP | 2 | WARREN | 1,643 | 1,443 | 238 | 1.5% |

| NEW JERSEY | | | 3,616,101 | 3,697,952 | 269,448 | 0.6% |
|---------------------|---|--------|-----------|-----------|---------|------|
| WHITE TOWNSHIP | 2 | WARREN | 2,516 | 2,651 | 490 | 1.7% |
| WASHINGTON TOWNSHIP | 2 | WARREN | 2,703 | 2,691 | 297 | 1.0% |
| WASHINGTON BOROUGH | 2 | WARREN | 3,084 | 3,184 | 190 | 0.5% |
| POHATCONG TOWNSHIP | 2 | WARREN | 1,539 | 1,551 | 133 | 0.7% |
| PHILLIPSBURG TOWN | 2 | WARREN | 7,041 | 7,132 | 468 | 0.6% |
| OXFORD TOWNSHIP | 2 | WARREN | 1,102 | 1,181 | 170 | 1.3% |
| MANSFIELD TOWNSHIP | 2 | WARREN | 3,674 | 3,857 | 516 | 1.2% |
| LOPATCONG TOWNSHIP | 2 | WARREN | 3,537 | 3,728 | 463 | 1.1% |
| LIBERTY TOWNSHIP | 2 | WARREN | 1,227 | 1,299 | 158 | 1.1% |

Source: Econsult Corporation (2008)

[page=6143] EXHIBIT B - MUNICIPAL GROWTH RATES IN THE EMPLOYMENT ALLOCATION MODEL

Employment growth of a municipality should slow down as the municipality's nonresidential growth capacity (in terms of floor space) is being reached. In other words, a municipality is unlikely to sustain its historical growth rates as measured between the 1993 and 2002 period in the following 16 years if it is approaching 100 percent build-out.

To capture this relationship between the anticipated employment growth rate between 2002 and 2018 and the 2006 build-out level, a regression model was developed to empirically estimate the implied historical growth rates that measure how build-out levels affect future growth rates. In this model, the dependent variable is the employment growth rate (a linear annual growth rate) between 1993 and 2006 for each of the 566 municipalities. The independent variable is the 1993 build-out level and was estimated by dividing the number of employment in 1993 with the sum of the 2006 employment and the anticipated increase in employment after 2002 based on all nonresidential land being developed. This equation applies to municipalities that had a positive growth between 1993 and 2006. However, for a few declining communities, this equation may end up as a build-out ratio over 100 percent if more employment was lost between 1993 and 2006 than the potential employment growth after 2002. In this case, the build-out level is estimated by changing the denominator in this equation to the sum of the 1993 employment and post-2002 potential employment that could be accommodated by a full development of all nonresidential land.

This regression model of implied historical rates of employment had 566 observations initially, but outliers with historical growth rates above the 99 percentile or below the 1 percentile in the sample were excluded. Since municipalities within the same COAH Region may behave differently as a group from others in a different COAH Region, the y-intercept of implied rates would differ by COAH regions. To capture this difference, one set of dummy variables is introduced in the model to reflect the effects of the COAH region. Unlike the housing model, the regression model of implied employment growth did not include a set of COAH regional interaction dummy variables because the

relationship between capacity and growth rates was not found to differ across COAH regions.

Figure A.2 - Employment by Municipality: 2002, 2004 and 2018

| Municipality | | County | Employment | Employment | 2018 | 2018 |
|---------------------------|--------|----------|------------|------------|---------------------|---------------------|
| | Region | | in 2002 | in 2004 | Employment Based | Employment Based |
| | | | | | On | On 'S' |
| | | | | | Historic | Curve |
| | | | | | Growth | |
| ABSECON CITY | 6 | ATLANTIC | 3329 | 3363 | 3696 | 3629 |
| ATLANTIC CITY | 6 | ATLANTIC | 60480 | 62189 | 66332 | 65195 |
| BRIGANTINE CITY | 6 | ATLANTIC | 2057 | 1914 | 1961 | 2133 |
| BUENA BOROUGH | 6 | ATLANTIC | 1655 | 1356 | 2167 | 1761 |
| BUENA VISTA TOWNSHIP | 6 | ATLANTIC | 1235 | 1196 | 1615 | 1485 |
| CORBIN CITY | 6 | ATLANTIC | 550 | 518 | 605 | 575 |
| EGG HARBOR TOWNSHIP | 6 | ATLANTIC | 16065 | 12724 | 19363 | 22808 |
| EGG HARBOR CITY | 6 | ATLANTIC | 3483 | 3780 | 4181 | 10417 |
| ESTELL MANOR CITY | 6 | ATLANTIC | 264 | 316 | 359 | 654 |
| FOLSOM BOROUGH | 6 | ATLANTIC | 882 | 924 | 998 | 1119 |
| GALLOWAY TOWNSHIP | 6 | ATLANTIC | 7516 | 7809 | 11842 | 12507 |
| HAMILTON TOWNSHIP | 6 | ATLANTIC | 10601 | 11219 | 13008 | 14281 |
| HAMMONTON TOWN | 6 | ATLANTIC | 8505 | 9199 | 12208 | 11851 |

| LINWOOD CITY | 6 | ATLANTIC | 2873 | 2936 | 3279 | 3541 |
|--------------------------|---|----------|-------|-------|-------|-------|
| LONGPORT BOROUGH | 6 | ATLANTIC | 233 | 216 | 268 | 250 |
| MARGATE CITY | 6 | ATLANTIC | 1681 | 1832 | 1910 | 2133 |
| MULLICA TOWNSHIP | 6 | ATLANTIC | 602 | 720 | 820 | 911 |
| NORTHFIELD CITY | 6 | ATLANTIC | 4789 | 4799 | 5473 | 5781 |
| PLEASANTVILLE CITY | 6 | ATLANTIC | 7699 | 7546 | 9422 | 9185 |
| PORT REPUBLIC CITY | 6 | ATLANTIC | 95 | 118 | 121 | 120 |
| SOMERS POINT CITY | 6 | ATLANTIC | 6185 | 6366 | 6683 | 7751 |
| VENTNOR CITY | 6 | ATLANTIC | 2053 | 1966 | 1947 | 1948 |
| WEYMOUTH TOWNSHIP | 6 | ATLANTIC | 20 | 219 | 220 | 272 |
| ALLENDALE BOROUGH | 1 | BERGEN | 6720 | 7271 | 6522 | 13259 |
| ALPINE BOROUGH | 1 | BERGEN | 352 | 345 | 387 | 306 |
| BERGENFIELD BOROUGH | 1 | BERGEN | 4260 | 4216 | 4753 | 4429 |
| BOGOTA BOROUGH | 1 | BERGEN | 1818 | 1744 | 1164 | 914 |
| CARLSTADT BOROUGH | 1 | BERGEN | 13417 | 12588 | 13929 | 13680 |

| CLIFFSIDE PARK BOROUGH | 1 | BERGEN | 2909 | 2860 | 2963 | 2991 |
|--------------------------------|---|--------|-------|-------|-------|-------|
| CLOSTER BOROUGH | 1 | BERGEN | 3144 | 3373 | 3447 | 3673 |
| CRESSKILL BOROUGH | 1 | BERGEN | 1899 | 1833 | 2027 | 2247 |
| DEMAREST BOROUGH | 1 | BERGEN | 1024 | 1000 | 964 | 896 |
| DUMONT BOROUGH | 1 | BERGEN | 2130 | 2192 | 2474 | 2829 |
| EAST RUTHERFORD BOROUGH | 1 | BERGEN | 9751 | 9576 | 10493 | 10532 |
| EDGEWATER BOROUGH | 1 | BERGEN | 3785 | 4375 | 5895 | 7545 |
| ELMWOOD PARK BOROUGH | 1 | BERGEN | 7853 | 7351 | 9196 | 8747 |
| EMERSON BOROUGH | 1 | BERGEN | 2734 | 2568 | 2594 | 2381 |
| ENGLEWOOD CITY | 1 | BERGEN | 14674 | 13908 | 14931 | 14500 |
| ENGLEWOOD CLIFFS BOROUGH | 1 | BERGEN | 8609 | 8962 | 9437 | 9060 |
| FAIR LAWN BOROUGH | 1 | BERGEN | 11407 | 11607 | 12610 | 11376 |
| FAIRVIEW BOROUGH | 1 | BERGEN | 3136 | 2736 | 3334 | 2665 |
| FORT LEE BOROUGH | 1 | BERGEN | 18097 | 15125 | 17251 | 17706 |

| FRANKLIN LAKES BOROUGH | 1 | BERGEN | 7649 | 8212 | 8326 | 12706 |
|---------------------------------|---|--------|-------|-------|-------|-------|
| GARFIELD CITY | 1 | BERGEN | 6068 | 5880 | 6680 | 5659 |
| GLEN ROCK BOROUGH | 1 | BERGEN | 3530 | 3731 | 3640 | 3972 |
| HACKENSACK CITY | 1 | BERGEN | 43948 | 45717 | 48074 | 51277 |
| HARRINGTON PARK BOROUGH | 1 | BERGEN | 733 | 769 | 829 | 1055 |
| HASBROUCK HEIGHTS BOROUGH | 1 | BERGEN | 4315 | 3909 | 4262 | 4093 |
| HAWORTH BOROUGH | 1 | BERGEN | 705 | 685 | 773 | 841 |
| HILLSDALE BOROUGH | 1 | BERGEN | 2311 | 2411 | 2484 | 2660 |
| HO-HO-KUS BOROUGH | 1 | BERGEN | 1129 | 888 | 1187 | 1369 |
| LEONIA BOROUGH | 1 | BERGEN | 1995 | 2105 | 2185 | 2419 |
| LITTLE FERRY BOROUGH | 1 | BERGEN | 3097 | 3183 | 3717 | 3534 |
| LODI BOROUGH | 1 | BERGEN | 5729 | 5670 | 6167 | 5739 |
| LYNDHURST TOWNSHIP | 1 | BERGEN | 12044 | 12066 | 13977 | 16738 |
| MAHWAH TOWNSHIP | 1 | BERGEN | 13384 | 13253 | 18034 | 21927 |

| MAYWOOD BOROUGH | 1 | BERGEN | 3587 | 4095 | 4326 | 4973 |
|-------------------------------|---|--------|-------|-------|-------|-------|
| MIDLAND PARK BOROUGH | 1 | BERGEN | 3667 | 3799 | 3924 | 4472 |
| MONTVALE BOROUGH | 1 | BERGEN | 9870 | 9814 | 10771 | 10201 |
| MOONACHIE BOROUGH | 1 | BERGEN | 6978 | 6816 | 6720 | 6112 |
| NEW MILFORD BOROUGH | 1 | BERGEN | 1758 | 1709 | 2049 | 2128 |
| NORTH ARLINGTON BOROUGH | 1 | BERGEN | 3130 | 3231 | 3082 | 3173 |
| NORTHVALE BOROUGH | 1 | BERGEN | 4132 | 4241 | 4382 | 3994 |
| NORWOOD BOROUGH | 1 | BERGEN | 1897 | 2041 | 2139 | 2480 |
| OAKLAND BOROUGH | 1 | BERGEN | 6943 | 8004 | 6712 | 6241 |
| OLD TAPPAN BOROUGH | 1 | BERGEN | 1752 | 1781 | 1900 | 3883 |
| ORADELL BOROUGH | 1 | BERGEN | 2952 | 2893 | 3096 | 2805 |
| PALISADES PARK BOROUGH | 1 | BERGEN | 3877 | 3316 | 4598 | 5034 |
| PARAMUS BOROUGH | 1 | BERGEN | 42990 | 43556 | 44898 | 45536 |
| PARK RIDGE | 1 | BERGEN | 3575 | 3456 | 3821 | 4216 |

Page 366 40 N.J.R. 5965(a)

| BOROUGH | | | | | | |
|---------------------------------|---|--------|-------|-------|-------|-------|
| RAMSEY BOROUGH | 1 | BERGEN | 10514 | 10615 | 10860 | 11120 |
| RIDGEFIELD BOROUGH | 1 | BERGEN | 5202 | 6178 | 5939 | 6031 |
| RIDGEFIELD PARK VILLAGE | 1 | BERGEN | 5087 | 4090 | 4755 | 4082 |
| RIDGEWOOD VILLAGE | 1 | BERGEN | 11548 | 11268 | 11628 | 11941 |
| RIVER EDGE BOROUGH | 1 | BERGEN | 2911 | 2698 | 2860 | 3097 |
| RIVER VALE TOWNSHIP | 1 | BERGEN | 1476 | 1479 | 1609 | 1548 |
| ROCHELLE PARK TOWNSHIP | 1 | BERGEN | 5000 | 4835 | 5560 | 4642 |
| ROCKLEIGH BOROUGH | 1 | BERGEN | 1804 | 2364 | 2418 | 2877 |
| RUTHERFORD BOROUGH | 1 | BERGEN | 7772 | 7666 | 8042 | 8037 |
| SADDLE BROOK TOWNSHIP | 1 | BERGEN | 9631 | 9644 | 10643 | 11059 |
| SADDLE RIVER BOROUGH | 1 | BERGEN | 736 | 1017 | 1321 | 2159 |
| SOUTH HACKENSACK TOWNSHIP | 1 | BERGEN | 5192 | 4827 | 5029 | 4746 |

| TEANECK TOWNSHIP | 1 | BERGEN | 13706 | 13692 | 14401 | 15154 |
|------------------------------|---|------------|-------|-------|-------|-------|
| TENAFLY BOROUGH | 1 | BERGEN | 4243 | 4093 | 3849 | 3615 |
| TETERBORO BOROUGH | 1 | BERGEN | 8391 | 8684 | 8978 | 9159 |
| UPPER SADDLE RIVER BOROUGH | 1 | BERGEN | 3973 | 4099 | 4408 | 6160 |
| WALDWICK BOROUGH | 1 | BERGEN | 2911 | 2946 | 3064 | 3079 |
| WALLINGTON BOROUGH | 1 | BERGEN | 2513 | 2361 | 2841 | 2707 |
| WASHINGTON TOWNSHIP | 1 | BERGEN | 1077 | 1188 | 598 | 410 |
| WESTWOOD BOROUGH | 1 | BERGEN | 5916 | 5683 | 5933 | 5640 |
| WOODCLIFF LAKE BOROUGH | 1 | BERGEN | 4292 | 4214 | 4817 | 4285 |
| WOOD-RIDGE BOROUGH | 1 | BERGEN | 3328 | 2984 | 3469 | 3015 |
| WYCKOFF TOWNSHIP | 1 | BERGEN | 5044 | 5123 | 5763 | 6669 |
| BASS RIVER TOWNSHIP | 5 | BURLINGTON | 1175 | 1230 | 1429 | 6875 |
| BEVERLY CITY | 5 | BURLINGTON | 483 | 468 | 523 | 542 |
| BORDENTOWN | 5 | BURLINGTON | 1770 | 1594 | 2042 | 1919 |

| CITY | | | | | | |
|-------------------------------|---|------------|-------|-------|-------|-------|
| BORDENTOWN TOWNSHIP | 5 | BURLINGTON | 4606 | 4563 | 5061 | 4640 |
| BURLINGTON CITY | 5 | BURLINGTON | 5724 | 5681 | 7391 | 8233 |
| BURLINGTON TOWNSHIP | 5 | BURLINGTON | 11114 | 11426 | 13526 | 14035 |
| CHESTERFIELD TOWNSHIP | 5 | BURLINGTON | 439 | 440 | 470 | 437 |
| CINNAMINSON TOWNSHIP | 5 | BURLINGTON | 7493 | 7600 | 8902 | 9673 |
| DELANCO TOWNSHIP | 5 | BURLINGTON | 2462 | 2578 | 3455 | 4643 |
| DELRAN TOWNSHIP | 5 | BURLINGTON | 4763 | 4651 | 5773 | 5694 |
| EASTAMPTON TOWNSHIP | 5 | BURLINGTON | 614 | 764 | 920 | 1475 |
| EDGEWATER PARK TOWNSHIP | 5 | BURLINGTON | 1525 | 1718 | 2041 | 2164 |
| EVESHAM TOWNSHIP | 5 | BURLINGTON | 22326 | 23867 | 25917 | 34247 |
| FIELDSBORO BOROUGH | 5 | BURLINGTON | 28 | 39 | 46 | 61 |
| FLORENCE TOWNSHIP | 5 | BURLINGTON | 2216 | 2341 | 3000 | 2656 |
| HAINESPORT TOWNSHIP | 5 | BURLINGTON | 2042 | 1816 | 2427 | 2416 |
| LUMBERTON | 5 | BURLINGTON | 3096 | 3594 | 5083 | 9238 |

40 N.J.R. 5965(a)

| TOWNSHIP | | | | | | |
|------------------------------|---|------------|-------|-------|-------|-------|
| MANSFIELD TOWNSHIP | 5 | BURLINGTON | 1353 | 1652 | 2006 | 2404 |
| MAPLE SHADE TOWNSHIP | 5 | BURLINGTON | 5640 | 5507 | 6190 | 6392 |
| MEDFORD TOWNSHIP | 5 | BURLINGTON | 8548 | 8657 | 9495 | 9613 |
| MEDFORD LAKES BOROUGH | 5 | BURLINGTON | 431 | 420 | 433 | 390 |
| MOORESTOWN TOWNSHIP | 5 | BURLINGTON | 23430 | 24796 | 26107 | 29376 |
| MOUNT HOLLY TOWNSHIP | 5 | BURLINGTON | 11009 | 10707 | 10816 | 10336 |
| MOUNT LAUREL TOWNSHIP | 5 | BURLINGTON | 31761 | 32973 | 37899 | 49168 |
| NEW HANOVER TOWNSHIP | 5 | BURLINGTON | 5781 | 5963 | 6251 | 7281 |
| NORTH HANOVER TOWNSHIP | 5 | BURLINGTON | 602 | 628 | 812 | 687 |
| PALMYRA BOROUGH | 5 | BURLINGTON | 1789 | 1822 | 2031 | 1915 |
| PEMBERTON BOROUGH | 5 | BURLINGTON | 401 | 323 | 359 | 258 |
| PEMBERTON TOWNSHIP | 5 | BURLINGTON | 5363 | 5892 | 6260 | 6602 |

Page 370 40 N.J.R. 5965(a)

| RIVERSIDE TOWNSHIP | 5 | BURLINGTON | 1646 | 1624 | 1846 | 1386 |
|----------------------------|---|------------|------|------|------|------|
| RIVERTON BOROUGH | 5 | BURLINGTON | 923 | 870 | 832 | 625 |
| SHAMONG TOWNSHIP | 5 | BURLINGTON | 875 | 1044 | 985 | 1083 |
| SOUTHAMPTON TOWNSHIP | 5 | BURLINGTON | 2444 | 2543 | 2592 | 3023 |
| SPRINGFIELD TOWNSHIP | 5 | BURLINGTON | 541 | 697 | 828 | 1024 |
| TABERNACLE TOWNSHIP | 5 | BURLINGTON | 1144 | 1322 | 1465 | 2073 |
| WASHINGTON TOWNSHIP | 5 | BURLINGTON | 366 | 381 | 537 | 635 |
| WESTAMPTON TOWNSHIP | 5 | BURLINGTON | 3650 | 3743 | 4619 | 5176 |
| WILLINGBORO TOWNSHIP | 5 | BURLINGTON | 7019 | 7442 | 7897 | 9170 |
| WOODLAND TOWNSHIP | 5 | BURLINGTON | 283 | 328 | 622 | 1132 |
| WRIGHTSTOWN BOROUGH | 5 | BURLINGTON | 570 | 712 | 986 | 824 |
| AUDUBON BOROUGH | 5 | CAMDEN | 2357 | 2613 | 3170 | 4120 |
| AUDUBON PARK BOROUGH | 5 | CAMDEN | 52 | 54 | 67 | 128 |
| BARRINGTON BOROUGH | 5 | CAMDEN | 1353 | 1372 | 1693 | 1659 |
| BELLMAWR | 5 | CAMDEN | 5042 | 5066 | 5424 | 4975 |

Page 371 40 N.J.R. 5965(a)

| BOROUGH | | | | | | |
|------------------------------|---|--------|-------|-------|-------|-------|
| BERLIN BOROUGH | 5 | CAMDEN | 4386 | 4400 | 5371 | 4755 |
| BERLIN TOWNSHIP | 5 | CAMDEN | 5074 | 5333 | 6584 | 9558 |
| BROOKLAWN BOROUGH | 5 | CAMDEN | 1091 | 1082 | 1167 | 1521 |
| CAMDEN CITY | 5 | CAMDEN | 30916 | 30448 | 36451 | 32185 |
| CHERRY HILL TOWNSHIP | 5 | CAMDEN | 49898 | 51821 | 54564 | 58093 |
| CHESILHURST BOROUGH | 5 | CAMDEN | 126 | 125 | 211 | 335 |
| CLEMENTON BOROUGH | 5 | CAMDEN | 2327 | 2608 | 2824 | 2838 |
| COLLINGS- WOOD BOROUGH | 5 | CAMDEN | 3086 | 2974 | 3143 | 3196 |
| GIBBSBORO BOROUGH | 5 | CAMDEN | 1717 | 1715 | 1709 | 1281 |
| GLOUCESTER TOWNSHIP | 5 | CAMDEN | 9996 | 10038 | 14156 | 15029 |
| GLOUCESTER CITY | 5 | CAMDEN | 2561 | 2668 | 2740 | 2535 |
| HADDON TOWNSHIP | 5 | CAMDEN | 3521 | 3557 | 3781 | 3431 |
| HADDONFIELD BOROUGH | 5 | CAMDEN | 6019 | 6417 | 6236 | 6923 |
| HADDON HEIGHTS BOROUGH | 5 | CAMDEN | 2155 | 2091 | 2227 | 2338 |
| HI-NELLA | 5 | CAMDEN | 59 | 60 | 83 | 73 |

40 N.J.R. 5965(a)

| BOROUGH | | | | | | |
|------------------------------|---|--------|-------|-------|-------|-------|
| LAUREL SPRINGS BOROUGH | 5 | CAMDEN | 835 | 964 | 848 | 1029 |
| LAWNSIDE BOROUGH | 5 | CAMDEN | 2626 | 2750 | 3340 | 3618 |
| LINDENWOLD BOROUGH | 5 | CAMDEN | 2088 | 2199 | 2538 | 2547 |
| MAGNOLIA BOROUGH | 5 | CAMDEN | 620 | 669 | 750 | 830 |
| MERCHANTVILLE BOROUGH | 5 | CAMDEN | 834 | 841 | 817 | 797 |
| MOUNT EPHRAIM BOROUGH | 5 | CAMDEN | 1102 | 1178 | 1129 | 1143 |
| OAKLYN BOROUGH | 5 | CAMDEN | 874 | 850 | 785 | 740 |
| PENNSAUKEN TOWNSHIP | 5 | CAMDEN | 23029 | 23023 | 25085 | 24394 |
| PINE HILL BOROUGH | 5 | CAMDEN | 971 | 1007 | 1225 | 1684 |
| PINE VALLEY BOROUGH | 5 | CAMDEN | 131 | 137 | 195 | 765 |
| RUNNEMEDE BOROUGH | 5 | CAMDEN | 2572 | 2476 | 2894 | 2968 |
| SOMERDALE BOROUGH | 5 | CAMDEN | 1703 | 1714 | 2020 | 2045 |
| STRATFORD BOROUGH | 5 | CAMDEN | 2333 | 2331 | 2405 | 2055 |
| TAVISTOCK BOROUGH | 5 | CAMDEN | 1 | 3 | 1 | 1 |
| VOORHEES | 5 | CAMDEN | 17098 | 17557 | 20349 | 22287 |

Page 373 40 N.J.R. 5965(a)

| TOWNSHIP | | | | | | |
|----------------------------|---|----------|------|-------|-------|-------|
| WATERFORD TOWNSHIP | 5 | CAMDEN | 3529 | 4093 | 4254 | 5190 |
| WINSLOW TOWNSHIP | 5 | CAMDEN | 6612 | 6697 | 8221 | 7957 |
| WOODLYNNE BOROUGH | 5 | CAMDEN | 194 | 202 | 212 | 248 |
| AVALON BOROUGH | 6 | CAPE MAY | 1604 | 1720 | 1655 | 1724 |
| CAPE MAY CITY | 6 | CAPE MAY | 5337 | 5848 | 5899 | 7098 |
| CAPE MAY POINT BOROUGH | 6 | CAPE MAY | 239 | 250 | 261 | 905 |
| DENNIS TOWNSHIP | 6 | CAPE MAY | 1938 | 2008 | 2418 | 2574 |
| LOWER TOWNSHIP | 6 | CAPE MAY | 3302 | 3379 | 3742 | 3716 |
| MIDDLE TOWNSHIP | 6 | CAPE MAY | 9875 | 10150 | 12498 | 12543 |
| NORTH WILDWOOD CITY | 6 | CAPE MAY | 1885 | 2022 | 1884 | 1704 |
| OCEAN CITY | 6 | CAPE MAY | 6264 | 6902 | 6388 | 6672 |
| SEA ISLE CITY | 6 | CAPE MAY | 1401 | 1508 | 1286 | 1280 |
| STONE HARBOR BOROUGH | 6 | CAPE MAY | 1208 | 1259 | 1177 | 1157 |
| UPPER TOWNSHIP | 6 | CAPE MAY | 3425 | 3859 | 5021 | 4949 |

| WEST CAPE MAY BOROUGH | 6 | CAPE MAY | 283 | 321 | 298 | 393 |
|------------------------------|---|------------|------|------|-------|-------|
| WEST WILDWOOD BOROUGH | 6 | CAPE MAY | 40 | 42 | 43 | 99 |
| WILDWOOD CITY | 6 | CAPE MAY | 4782 | 5268 | 5339 | 5668 |
| WILDWOOD CREST BOROUGH | 6 | CAPE MAY | 2262 | 2296 | 2240 | 1961 |
| WOODBINE BOROUGH | 6 | CAPE MAY | 618 | 684 | 1140 | 1007 |
| BRIDGETON CITY | 6 | CUMBERLAND | 9419 | 9061 | 13336 | 11645 |
| COMMERCIAL TOWNSHIP | 6 | CUMBERLAND | 493 | 500 | 687 | 534 |
| DEERFIELD TOWNSHIP | 6 | CUMBERLAND | 733 | 688 | 1488 | 1212 |
| DOWNE TOWNSHIP | 6 | CUMBERLAND | 316 | 323 | 582 | 815 |
| FAIRFIELD TOWNSHIP | 6 | CUMBERLAND | 1400 | 1588 | 1785 | 1745 |
| GREENWICH TOWNSHIP | 6 | CUMBERLAND | 98 | 100 | 146 | 150 |
| HOPEWELL TOWNSHIP | 6 | CUMBERLAND | 249 | 245 | 399 | 298 |
| LAWRENCE TOWNSHIP | 6 | CUMBERLAND | 1431 | 1487 | 2526 | 3785 |
| MAURICE RIVER | 6 | CUMBERLAND | 456 | 469 | 799 | 742 |

| CITY SHILOH 6 CUMBERLAND 185 145 214 33 BOROUGH STOW CREEK 6 CUMBERLAND 461 668 864 34 TOWNSHIP UPPER 6 CUMBERLAND 1990 1916 3117 22 | |
|---|-------|
| CITY SHILOH 6 CUMBERLAND 185 145 214 33 BOROUGH STOW CREEK 6 CUMBERLAND 461 668 864 34 TOWNSHIP UPPER 6 CUMBERLAND 1990 1916 3117 22 | |
| BOROUGH STOW CREEK 6 CUMBERLAND 461 668 864 34 TOWNSHIP UPPER 6 CUMBERLAND 1990 1916 3117 22 | 12976 |
| TOWNSHIP UPPER 6 CUMBERLAND 1990 1916 3117 22 | 371 |
| | 3403 |
| DEERFIELD TOWNSHIP | 2828 |
| VINELAND CITY 6 CUMBERLAND 28327 29901 44309 40 | 40545 |
| BELLEVILLE 2 ESSEX 8729 9325 10012 94 TOWNSHIP | 9472 |
| BLOOMFIELD 2 ESSEX 13628 13229 14443 13 TOWNSHIP | 13752 |
| CALDWELL 2 ESSEX 2483 2473 2593 27 BOROUGH | 2752 |
| CEDAR GROVE 2 ESSEX 5530 5758 6342 69 TOWNSHIP | 6928 |
| CITY OF 2 ESSEX 7039 6247 7201 57 ORANGE TOWNSHIP | 5715 |
| EAST ORANGE 2 ESSEX 15600 16059 17274 16 | 16135 |
| ESSEX FELLS 2 ESSEX 233 211 331 3 BOROUGH | 378 |
| FAIRFIELD 2 ESSEX 23443 23233 24875 26 TOWNSHIP | 26185 |

1120

1033

1064

1080

GLEN RIDGE

BOROUGH

2

ESSEX

| IRVINGTON TOWNSHIP | 2 | ESSEX | 9771 | 9448 | 11200 | 10738 |
|-------------------------------------|---|------------|--------|--------|--------|--------|
| LIVINGSTON TOWNSHIP | 2 | ESSEX | 22820 | 22522 | 23195 | 24651 |
| MAPLEWOOD TOWNSHIP | 2 | ESSEX | 5348 | 4978 | 5612 | 4615 |
| MILLBURN TOWNSHIP | 2 | ESSEX | 14732 | 17209 | 17703 | 20713 |
| MONTCLAIR TOWNSHIP | 2 | ESSEX | 12920 | 12732 | 13506 | 13758 |
| NEWARK CITY | 2 | ESSEX | 134035 | 132378 | 155245 | 141559 |
| NORTH CALDWELL BOROUGH | 2 | ESSEX | 609 | 547 | 940 | 865 |
| NUTLEY TOWNSHIP | 2 | ESSEX | 10584 | 10935 | 11175 | 10202 |
| ROSELAND BOROUGH | 2 | ESSEX | 10882 | 10369 | 11313 | 10262 |
| SOUTH ORANGE VILLAGE TOWNSHIP | 2 | ESSEX | 5381 | 5560 | 5660 | 6324 |
| VERONA TOWNSHIP | 2 | ESSEX | 4162 | 4031 | 4096 | 3764 |
| WEST CALDWELL TOWNSHIP | 2 | ESSEX | 8277 | 7845 | 9012 | 8756 |
| WEST ORANGE TOWNSHIP | 2 | ESSEX | 17238 | 17101 | 18357 | 16994 |
| CLAYTON BOROUGH | 5 | GLOUCESTER | 1101 | 985 | 1347 | 1076 |

| DEPTFORD TOWNSHIP | 5 | GLOUCESTER | 10959 | 11306 | 14511 | 14184 |
|-------------------------------|---|------------|-------|-------|-------|-------|
| EAST GREENWICH TOWNSHIP | 5 | GLOUCESTER | 1363 | 1515 | 1953 | 2360 |
| ELK TOWNSHIP | 5 | GLOUCESTER | 473 | 553 | 729 | 846 |
| FRANKLIN TOWNSHIP | 5 | GLOUCESTER | 2321 | 2428 | 3226 | 2975 |
| GLASSBORO BOROUGH | 5 | GLOUCESTER | 5583 | 5676 | 7840 | 8321 |
| GREENWICH TOWNSHIP | 5 | GLOUCESTER | 1214 | 1138 | 1466 | 1041 |
| HARRISON TOWNSHIP | 5 | GLOUCESTER | 1851 | 2304 | 3155 | 6257 |
| LOGAN TOWNSHIP | 5 | GLOUCESTER | 3826 | 3990 | 6041 | 5823 |
| MANTUA TOWNSHIP | 5 | GLOUCESTER | 7613 | 8772 | 10658 | 19126 |
| MONROE TOWNSHIP | 5 | GLOUCESTER | 6297 | 7070 | 9089 | 10217 |
| NATIONAL PARK BOROUGH | 5 | GLOUCESTER | 272 | 315 | 362 | 428 |
| NEWFIELD BOROUGH | 5 | GLOUCESTER | 1235 | 1066 | 1005 | 828 |
| PAULSBORO BOROUGH | 5 | GLOUCESTER | 3263 | 3596 | 4269 | 5045 |
| PITMAN BOROUGH | 5 | GLOUCESTER | 2550 | 2490 | 3056 | 2592 |

| SOUTH HARRISON TOWNSHIP | 5 | GLOUCESTER | 400 | 463 | 298 | 307 |
|--------------------------------|---|------------|-------|-------|--------|--------|
| SWEDESBOR0 BOROUGH | 5 | GLOUCESTER | 5887 | 6386 | 7584 | 24356 |
| WASHINGTON TOWNSHIP | 5 | GLOUCESTER | 10969 | 11268 | 13014 | 12711 |
| WENONAH BOROUGH | 5 | GLOUCESTER | 757 | 705 | 735 | 821 |
| WEST DEPTFORD TOWNSHIP | 5 | GLOUCESTER | 8368 | 8816 | 11207 | 13979 |
| WESTVILLE BOROUGH | 5 | GLOUCESTER | 2400 | 2612 | 2737 | 3008 |
| WOODBURY CITY | 5 | GLOUCESTER | 11318 | 11499 | 11613 | 13021 |
| WOODBURY HEIGHTS BOROUGH | 5 | GLOUCESTER | 2037 | 2025 | 2228 | 2340 |
| WOOLWICH TOWNSHIP | 5 | GLOUCESTER | 678 | 812 | 1406 | 5402 |
| BAYONNE CITY | 1 | HUDSON | 14535 | 14974 | 22600 | 17509 |
| EAST NEWARK BOROUGH | 1 | HUDSON | 833 | 743 | 864 | 641 |
| GUTTENBERG TOWN | 1 | HUDSON | 1344 | 1299 | 1562 | 1288 |
| HARRISON TOWN | 1 | HUDSON | 3861 | 3737 | 5944 | 4291 |
| HOBOKEN CITY | 1 | HUDSON | 13870 | 14488 | 16401 | 19176 |
| JERSEY CITY | 1 | HUDSON | 94837 | 97628 | 123048 | 122731 |
| KEARNY TOWN | 1 | HUDSON | 18209 | 16208 | 19748 | 17407 |

40 N.J.R. 5965(a)

| NORTH BERGEN TOWNSHIP | 1 | HUDSON | 20403 | 19083 | 24829 | 20440 |
|--------------------------|---|-----------|-------|-------|-------|-------|
| SECAUCUS TOWN | 1 | HUDSON | 36346 | 36478 | 39312 | 36211 |
| UNION CITY | 1 | HUDSON | 11495 | 10744 | 13649 | 13343 |
| WEEHAWKEN TOWNSHIP | 1 | HUDSON | 7855 | 8223 | 9396 | 10453 |
| WEST NEW YORK TOWN | 1 | HUDSON | 7117 | 7008 | 8232 | 7181 |
| ALEXANDRIA TOWNSHIP | 3 | HUNTERDON | 299 | 295 | 599 | 403 |
| BETHLEHEM TOWNSHIP | 3 | HUNTERDON | 352 | 329 | 449 | 298 |
| BLOOMSBURY BOROUGH | 3 | HUNTERDON | 673 | 670 | 605 | 614 |
| CALIFON BOROUGH | 3 | HUNTERDON | 893 | 890 | 930 | 1264 |
| CLINTON TOWN | 3 | HUNTERDON | 2355 | 2295 | 3199 | 3849 |
| CLINTON TOWNSHIP | 3 | HUNTERDON | 4491 | 4317 | 6545 | 5521 |
| DELAWARE TOWNSHIP | 3 | HUNTERDON | 317 | 315 | 482 | 424 |
| EAST AMWELL TOWNSHIP | 3 | HUNTERDON | 1006 | 1212 | 1364 | 2183 |
| FLEMINGTON BOROUGH | 3 | HUNTERDON | 6425 | 6959 | 7083 | 7196 |
| FRANKLIN TOWNSHIP | 3 | HUNTERDON | 1004 | 1179 | 1317 | 2726 |
| FRENCHTOWN | 3 | HUNTERDON | 739 | 877 | 879 | 1035 |

| BOROUGH | | | | | | |
|-------------------------|---|-----------|------|------|-------|-------|
| GLEN GARDNER BOROUGH | 3 | HUNTERDON | 557 | 561 | 587 | 773 |
| HAMPTON BOROUGH | 3 | HUNTERDON | 614 | 653 | 956 | 1149 |
| HIGH BRIDGE BOROUGH | 3 | HUNTERDON | 554 | 588 | 765 | 930 |
| HOLLAND TOWNSHIP | 3 | HUNTERDON | 207 | 219 | 242 | 130 |
| KINGWOOD TOWNSHIP | 3 | HUNTERDON | 346 | 336 | 550 | 418 |
| LAMBERTVILLE CITY | 3 | HUNTERDON | 1802 | 1926 | 2397 | 2847 |
| LEBANON BOROUGH | 3 | HUNTERDON | 1975 | 2084 | 2121 | 2805 |
| LEBANON TOWNSHIP | 3 | HUNTERDON | 1034 | 1030 | 1103 | 1229 |
| MILFORD BOROUGH | 3 | HUNTERDON | 1046 | 977 | 902 | 779 |
| RARITAN TOWNSHIP | 3 | HUNTERDON | 8347 | 8453 | 10676 | 11798 |
| READINGTON TOWNSHIP | 3 | HUNTERDON | 6287 | 8163 | 8258 | 12232 |
| STOCKTON BOROUGH | 3 | HUNTERDON | 409 | 444 | 505 | 670 |
| TEWKSBURY TOWNSHIP | 3 | HUNTERDON | 797 | 835 | 1116 | 2058 |
| UNION TOWNSHIP | 3 | HUNTERDON | 1223 | 1089 | 1513 | 936 |
| WEST AMWELL | 3 | HUNTERDON | 257 | 242 | 392 | 287 |

| TOWNSHIP | | | | | | |
|--------------------------|---|-----------|-------|-------|-------|-------|
| EAST WINDSOR TOWNSHIP | 4 | MERCER | 6942 | 7148 | 12259 | 9477 |
| EWING TOWNSHIP | 4 | MERCER | 14959 | 14393 | 23805 | 18278 |
| HAMILTON TOWNSHIP | 4 | MERCER | 27507 | 28345 | 38475 | 33628 |
| HIGHTSTOWN BOROUGH | 4 | MERCER | 3859 | 3552 | 4505 | 4016 |
| HOPEWELL BOROUGH | 4 | MERCER | 617 | 646 | 926 | 923 |
| HOPEWELL TOWNSHIP | 4 | MERCER | 4204 | 4402 | 8280 | 8194 |
| LAWRENCE TOWNSHIP | 4 | MERCER | 22831 | 23517 | 31875 | 28478 |
| PENNINGTON BOROUGH | 4 | MERCER | 4173 | 4692 | 5027 | 11460 |
| PRINCETON BOROUGH | 4 | MERCER | 19817 | 21606 | 24451 | 29598 |
| PRINCETON TOWNSHIP | 4 | MERCER | 10256 | 10856 | 11731 | 17007 |
| TRENTON CITY | 4 | MERCER | 30779 | 32143 | 43610 | 38151 |
| WASHINGTON TOWNSHIP | 4 | MERCER | 4859 | 6022 | 7349 | 17679 |
| WEST WINDSOR TOWNSHIP | 4 | MERCER | 20153 | 19309 | 26737 | 29348 |
| CARTERET BOROUGH | 3 | MIDDLESEX | 9517 | 9019 | 10358 | 10469 |
| CRANBURY | 3 | MIDDLESEX | 13375 | 10394 | 14353 | 14436 |

| TOWNSHIP | | | | | | |
|--------------------------------|---|-----------|-------|-------|-------|-------|
| DUNELLEN BOROUGH | 3 | MIDDLESEX | 1277 | 1234 | 1233 | 1163 |
| EAST BRUNSWICK TOWNSHIP | 3 | MIDDLESEX | 22152 | 22092 | 28027 | 26402 |
| EDISON TOWNSHIP | 3 | MIDDLESEX | 75173 | 76407 | 88168 | 89308 |
| HELMETTA BOROUGH | 3 | MIDDLESEX | 172 | 204 | 270 | 483 |
| HIGHLAND PARK BOROUGH | 3 | MIDDLESEX | 2562 | 2462 | 3459 | 3276 |
| JAMESBURG BOROUGH | 3 | MIDDLESEX | 4145 | 4407 | 3866 | 6879 |
| METUCHEN BOROUGH | 3 | MIDDLESEX | 5721 | 6113 | 6848 | 7572 |
| MIDDLESEX BOROUGH | 3 | MIDDLESEX | 6598 | 6178 | 6740 | 6442 |
| MILLTOWN BOROUGH | 3 | MIDDLESEX | 2613 | 2920 | 2721 | 3095 |
| MONROE TOWNSHIP | 3 | MIDDLESEX | 4856 | 5212 | 10300 | 31216 |
| NEW BRUNSWICK CITY | 3 | MIDDLESEX | 33492 | 34648 | 41308 | 38580 |
| NORTH BRUNSWICK TOWNSHIP | 3 | MIDDLESEX | 16446 | 17828 | 24620 | 26433 |
| OLD BRIDGE TOWNSHIP | 3 | MIDDLESEX | 11654 | 11487 | 15652 | 15388 |

| PERTH AMBOY CITY | 3 | MIDDLESEX | 12228 | 12254 | 16233 | 13574 |
|--------------------------------|---|-----------|-------|-------|-------|-------|
| PISCATAWAY TOWNSHIP | 3 | MIDDLESEX | 32783 | 32693 | 40472 | 35493 |
| PLAINSBORO TOWNSHIP | 3 | MIDDLESEX | 12425 | 12800 | 17725 | 16081 |
| SAYREVILLE BOROUGH | 3 | MIDDLESEX | 7223 | 7602 | 12063 | 9812 |
| SOUTH AMBOY CITY | 3 | MIDDLESEX | 2758 | 2757 | 3775 | 3236 |
| SOUTH BRUNSWICK TOWNSHIP | 3 | MIDDLESEX | 21013 | 20697 | 28461 | 26575 |
| SOUTH PLAINFIELD BOROUGH | 3 | MIDDLESEX | 18986 | 19496 | 22423 | 22801 |
| SOUTH RIVER BOROUGH | 3 | MIDDLESEX | 3153 | 3410 | 4126 | 5265 |
| SPOTSWOOD BOROUGH | 3 | MIDDLESEX | 2417 | 2628 | 2874 | 2917 |
| WOODBRIDGE TOWNSHIP | 3 | MIDDLESEX | 48894 | 48303 | 56687 | 56827 |
| ABERDEEN TOWNSHIP | 4 | MONMOUTH | 4415 | 4841 | 6840 | 6278 |
| ALLENHURST BOROUGH | 4 | MONMOUTH | 547 | 563 | 504 | 342 |
| ALLENTOWN BOROUGH | 4 | MONMOUTH | 1644 | 1853 | 1793 | 3450 |
| ASBURY PARK CITY | 4 | MONMOUTH | 3617 | 3385 | 5055 | 3990 |
| ATLANTIC HIGHLANDS | 4 | MONMOUTH | 2310 | 2127 | 2720 | 3613 |

| BOROUGH | | | | | | |
|--------------------------------|---|---------------|-------|-------|-------|-------|
| AVON-BY- THE-SEA BOROUGH | 4 | MONMOUTH | 438 | 450 | 544 | 435 |
| BELMAR BOROUGH | 4 | MONMOUTH | 2157 | 2055 | 2340 | 2179 |
| BRADLEY BEACH BOROUGH | 4 | MONMOUTH | 814 | 883 | 899 | 961 |
| BRIELLE BOROUGH | 4 | MONMOUTH | 1254 | 1316 | 1431 | 1470 |
| COLTS NECK TOWNSHIP | 4 | MONMOUTH | 2560 | 2918 | 3086 | 4664 |
| DEAL BOROUGH | 4 | MONMOUTH | 609 | 716 | 626 | 608 |
| EATONTOWN BOROUGH | 4 | MONMOUTH H | 12336 | 12886 | 19041 | 19484 |
| ENGLISHTOWN BOROUGH | 4 | MONMOUTH | 2786 | 2822 | 3216 | 3361 |
| FAIR HAVEN BOROUGH | 4 | MONMOUTH | 1257 | 1368 | 1236 | 1260 |
| FARMINGDALE BOROUGH | 4 | MONMOUTH | 3677 | 3888 | 4692 | 8589 |
| FREEHOLD BOROUGH | 4 | MONMOUTH | 13810 | 16295 | 16453 | 21886 |
| FREEHOLD TOWNSHIP | 4 | MONMOUTH | 14345 | 13560 | 20424 | 16527 |
| HAZLET TOWNSHIP | 4 | MONMOUTH | 6331 | 6743 | 7924 | 8184 |
| HIGHLANDS BOROUGH | 4 | MONMOUTH | 958 | 933 | 1540 | 1277 |

| HOLMDEL TOWNSHIP | 4 | MONMOUTH | 10594 | 9992 | 13044 | 9726 |
|--------------------------|---|----------|-------|-------|-------|-------|
| HOWELL TOWNSHIP | 4 | MONMOUTH | 8683 | 9700 | 17436 | 15908 |
| INTERLAKEN BOROUGH | 4 | MONMOUTH | 48 | 27 | 52 | 121 |
| KEANSBURG BOROUGH | 4 | MONMOUTH | 1316 | 1438 | 1532 | 2071 |
| KEYPORT BOROUGH | 4 | MONMOUTH | 2487 | 2553 | 3069 | 3131 |
| LITTLE SILVER BOROUGH | 4 | MONMOUTH | 2294 | 2330 | 2347 | 2756 |
| LOCH ARBOUR VILLAGE | 4 | MONMOUTH | 53 | 63 | 64 | 300 |
| LONG BRANNCH CITY | 4 | MONMOUTH | 8685 | 9105 | 12165 | 10353 |
| MANALAPAN TOWNSHIP | 4 | MONMOUTH | 8497 | 9696 | 11665 | 16051 |
| MANASQUAN BOROUGH | 4 | MONMOUTH | 5711 | 6193 | 5954 | 9136 |
| MARLBORO TOWNSHIP | 4 | MONMOUTH | 8187 | 8168 | 12218 | 12917 |
| MATAWAN BOROUGH | 4 | MONMOUTH | 4114 | 4419 | 4664 | 5544 |
| MIDDLETOWN TOWNSHIP | 4 | MONMOUTH | 16569 | 15996 | 19309 | 17170 |
| MILLSTONE TOWNSHIP | 4 | MONMOUTH | 1351 | 1427 | 2403 | 3022 |
| MONMOUTH BEACH | 4 | MONMOUTH | 556 | 622 | 698 | 767 |

| BOROUGH | | | | | | |
|-----------------------------|---|----------|-------|-------|-------|-------|
| NEPTUNE TOWNSHIP | 4 | MONMOUTH | 10892 | 12324 | 15272 | 14375 |
| NEPTUNE CITY BOROUGH | 4 | MONMOUTH | 6013 | 6911 | 7232 | 14002 |
| OCEAN TOWNSHIP | 4 | MONMOUTH | 8885 | 9516 | 11993 | 11355 |
| OCEANPORT BOROUGH | 4 | MONMOUTH | 7782 | 7538 | 8115 | 7989 |
| RED BANK BOROUGH | 4 | MONMOUTH | 16106 | 14771 | 16975 | 17502 |
| ROOSEVELT BOROUGH | 4 | MONMOUTH | 94 | 99 | 113 | 127 |
| RUMSON BOROUGH | 4 | MONMOUTH | 1589 | 1481 | 1596 | 1929 |
| SEA BRIGHT BOROUGH | 4 | MONMOUTH | 822 | 916 | 757 | 725 |
| SEA GIRT BOROUGH | 4 | MONMOUTH | 1921 | 1956 | 2027 | 2862 |
| SHREWSBURY BOROUGH | 4 | MONMOUTH | 4474 | 4626 | 4950 | 5068 |
| SHREWSBURY TOWNSHIP | 4 | MONMOUTH | 1304 | 1620 | 1615 | 2821 |
| LAKE COMO BOROUGH | 4 | MONMOUTH | 354 | 382 | 843 | 372 |
| SPRING LAKE BOROUGH | 4 | MONMOUTH | 1124 | 1089 | 1071 | 1048 |
| SPRING LAKE HEIGHTS BOROUGH | 4 | MONMOUTH | 1345 | 1440 | 1520 | 1634 |
| TINTON FALLS BOROUGH | 4 | MONMOUTH | 6656 | 7236 | 12821 | 12235 |

| UNION BEACH | 4 | MONMOUTH | 959 | 949 | 1120 | 995 |
|--------------------------------|---|----------|-------|-------|-------|-------|
| BOROUGH | | | | | | |
| UPPER FREEHOLD TOWNSHIP | 4 | MONMOUTH | 1453 | 1665 | 2044 | 3432 |
| WALL TOWNSHIP | 4 | MONMOUTH | 9479 | 9291 | 18941 | 14086 |
| WEST LONG BRANCH BOROUGH | 4 | MONMOUTH | 5477 | 5855 | 6063 | 7122 |
| BOONTON TOWN | 2 | MORRIS | 3019 | 3274 | 3400 | 4141 |
| BOONTON TOWNSHIP | 2 | MORRIS | 1444 | 1577 | 1797 | 1861 |
| BUTLER BOROUGH | 2 | MORRIS | 2814 | 2921 | 3054 | 3059 |
| CHATHAM BOROUGH | 2 | MORRIS | 3870 | 4165 | 4048 | 4463 |
| CHATHAM TOWNSHIP | 2 | MORRIS | 1859 | 1685 | 1943 | 1909 |
| CHESTER BOROUGH | 2 | MORRIS | 2688 | 2850 | 3179 | 3389 |
| CHESTER TOWNSHIP | 2 | MORRIS | 1279 | 1158 | 1434 | 1278 |
| DENVILLE TOWNSHIP | 2 | MORRIS | 8890 | 9278 | 9727 | 11013 |
| DOVER TOWN | 2 | MORRIS | 6933 | 6971 | 9509 | 7891 |
| EAST HANOVER TOWNSHIP | 2 | MORRIS | 14557 | 14699 | 15673 | 17780 |
| FLORHAM PARK | 2 | MORRIS | 13430 | 13706 | 16673 | 18189 |

40 N.J.R. 5965(a)

| BOROUGH | | | | | | |
|--------------------------|---|--------|-------|-------|-------|-------|
| HANOVER TOWNSHIP | 2 | MORRIS | 16478 | 16504 | 19418 | 19358 |
| HARDING TOWNSHIP | 2 | MORRIS | 896 | 878 | 1002 | 933 |
| JEFFERSON TOWNSHIP | 2 | MORRIS | 2374 | 2529 | 2923 | 3298 |
| KINNELON BOROUGH | 2 | MORRIS | 1884 | 1934 | 1965 | 2462 |
| LINCOLN PARK BOROUGH | 2 | MORRIS | 3410 | 3564 | 3751 | 4152 |
| LONG HILL TOWNSHIP | 2 | MORRIS | 2623 | 2683 | 3486 | 4290 |
| MADISON BOROUGH | 2 | MORRIS | 9272 | 8819 | 9669 | 11553 |
| MENDHAM BOROUGH | 2 | MORRIS | 1599 | 1736 | 2093 | 3255 |
| MENDHAM TOWNSHIP | 2 | MORRIS | 792 | 808 | 1164 | 1111 |
| MINE HILL TOWNSHIP | 2 | MORRIS | 478 | 540 | 823 | 1354 |
| MONTVILLE TOWNSHIP | 2 | MORRIS | 11486 | 11257 | 12374 | 16172 |
| MORRIS TOWNSHIP | 2 | MORRIS | 3417 | 3530 | 4521 | 3706 |
| MORRIS PLAINS BOROUGH | 2 | MORRIS | 10033 | 9946 | 11111 | 11069 |
| MORRISTOWN TOWN | 2 | MORRIS | 34804 | 33945 | 32130 | 30425 |
| MOUNTAIN | 2 | MORRIS | 2761 | 2735 | 3077 | 3688 |

40 N.J.R. 5965(a)

| LAKES BOROUGH | | | | | | |
|---------------------------------------|---|--------|-------|-------|-------|-------|
| MOUNT ARLINGTON BOROUGH | 2 | MORRIS | 1335 | 1239 | 1525 | 1701 |
| MOUNT OLIVE TOWNSHIP | 2 | MORRIS | 10839 | 11156 | 12098 | 15825 |
| NETCONG BOROUGH | 2 | MORRIS | 914 | 867 | 970 | 983 |
| PARSIPPANY- TROY HILLS TOWNSHIP | 2 | MORRIS | 50130 | 53991 | 64780 | 75202 |
| PEQUANNOCK TOWNSHIP | 2 | MORRIS | 6042 | 6400 | 6941 | 7533 |
| RANDOLPH TOWNSHIP | 2 | MORRIS | 7762 | 7656 | 9056 | 9253 |
| RIVERDALE BOROUGH | 2 | MORRIS | 2568 | 2841 | 3565 | 4122 |
| ROCKAWAY BOROUGH | 2 | MORRIS | 6247 | 6577 | 7432 | 10802 |
| ROCKAWAY TOWNSHIP | 2 | MORRIS | 10488 | 10289 | 11981 | 12487 |
| ROXBURY TOWNSHIP | 2 | MORRIS | 8426 | 8602 | 10169 | 10720 |
| VICTORY GARDENS BOROUGH | 2 | MORRIS | 110 | 101 | 105 | 107 |
| WASHINGTON TOWNSHIP | 2 | MORRIS | 2174 | 2190 | 2854 | 3417 |
| WHARTON BOROUGH | 2 | MORRIS | 3098 | 3225 | 3654 | 6944 |

| BARNEGAT TOWNSHIP | 4 | OCEAN | 1814 | 2137 | 4531 | 5071 |
|------------------------------|---|-------|-------|-------|-------|-------|
| BARNEGAT LIGHT BOROUGH | 4 | OCEAN | 349 | 405 | 403 | 483 |
| BAY HEAD BOROUGH | 4 | OCEAN | 437 | 468 | 445 | 356 |
| BEACH HAVEN BOROUGH | 4 | OCEAN | 1733 | 1788 | 1574 | 1553 |
| BEACHWOOD BOROUGH | 4 | OCEAN | 864 | 789 | 986 | 1143 |
| BERKELEY TOWNSHIP | 4 | OCEAN | 4206 | 4798 | 7938 | 7510 |
| BRICK TOWNSHIP | 4 | OCEAN | 17853 | 18789 | 23213 | 26818 |
| TOMS RIVER TOWNSHIP | 4 | OCEAN | 40080 | 40994 | 58398 | 54262 |
| EAGLESWOOD TOWNSHIP | 4 | OCEAN | 432 | 639 | 1697 | 4719 |
| HARVEY CEDARS BOROUGH | 4 | OCEAN | 225 | 259 | 240 | 286 |
| ISLAND HEIGHTS BOROUGH | 4 | OCEAN | 271 | 331 | 358 | 947 |
| JACKSON TOWNSHIP | 4 | OCEAN | 10221 | 8943 | 17358 | 13067 |
| LACEY TOWNSHIP | 4 | OCEAN | 5251 | 5465 | 9902 | 8709 |
| LAKEHURST BOROUGH | 4 | OCEAN | 1572 | 3113 | 3046 | 7155 |

| LAKEWOOD TOWNSHIP | 4 | OCEAN | 23659 | 24365 | 35550 | 35256 |
|----------------------------------|---|-------|-------|-------|-------|-------|
| LAVALLETTE BOROUGH | 4 | OCEAN | 809 | 882 | 863 | 868 |
| LITTLE EGG HARBOR TOWNSHIP | 4 | OCEAN | 2137 | 2475 | 4527 | 7053 |
| LONG BEACH TOWNSHIP | 4 | OCEAN | 1315 | 1454 | 1370 | 1484 |
| MANCHESTER TOWNSHIP | 4 | OCEAN | 3463 | 3622 | 9164 | 7965 |
| MANTOLOKING BOROUGH | 4 | OCEAN | 181 | 184 | 175 | 221 |
| OCEAN TOWNSHIP | 4 | OCEAN | 855 | 979 | 1737 | 2536 |
| OCEAN GATE BOROUGH | 4 | OCEAN | 108 | 89 | 129 | 177 |
| PINE BEACH BOROUGH | 4 | OCEAN | 517 | 101 | 432 | 359 |
| PLUMSTED TOWNSHIP | 4 | OCEAN | 982 | 1623 | 1994 | 2529 |
| POINT PLEASANT BOROUGH | 4 | OCEAN | 4408 | 3956 | 4776 | 3595 |
| POINT PLEASANT BEACH | 4 | OCEAN | 3875 | 4072 | 3953 | 4268 |
| BOROUGH SEASIDE HEIGHTS BOROUGH | 4 | OCEAN | 1309 | 1410 | 1555 | 1347 |
| SEASIDE PARK | 4 | OCEAN | 863 | 1082 | 1008 | 1513 |

Page 392 40 N.J.R. 5965(a)

| BOROUGH | | | | | | |
|--------------------------------|---|---------|-------|-------|-------|-------|
| SHIP BOTTOM BOROUGH | 4 | OCEAN | 1131 | 1239 | 1166 | 1268 |
| SOUTH TOMS RIVER BOROUGH | 4 | OCEAN | 432 | 447 | 736 | 914 |
| STAFFORD TOWNSHIP | 4 | OCEAN | 8086 | 8764 | 12298 | 14597 |
| SURF CITY BOROUGH | 4 | OCEAN | 653 | 611 | 650 | 764 |
| TUCKERTON BOROUGH | 4 | OCEAN | 1116 | 1127 | 1743 | 1301 |
| BLOOMING- DALE BOROUGH | 1 | PASSAIC | 1260 | 1335 | 1394 | 1815 |
| CLIFTON CITY | 1 | PASSAIC | 31141 | 31898 | 38669 | 34158 |
| HALEDON BOROUGH | 1 | PASSAIC | 1542 | 1609 | 2169 | 2098 |
| HAWTHORNE BOROUGH | 1 | PASSAIC | 5723 | 5692 | 6817 | 6609 |
| LITTLE FALLS TOWNSHIP | 1 | PASSAIC | 5605 | 5565 | 6506 | 6031 |
| NORTH HALEDON BOROUGH | 1 | PASSAIC | 1588 | 1741 | 2118 | 2593 |
| PASSAIC CITY | 1 | PASSAIC | 19193 | 18272 | 20637 | 20072 |
| PATERSON CITY | 1 | PASSAIC | 37872 | 38056 | 43296 | 39581 |
| POMPTON | 1 | PASSAIC | 1986 | 2217 | 2443 | 2347 |

Page 393 40 N.J.R. 5965(a)

| LAKES BOROUGH | | | | | | |
|-------------------------------|---|---------|-------|-------|-------|-------|
| PROSPECT PARK BOROUGH | 1 | PASSAIC | 1013 | 1133 | 1685 | 1294 |
| RINGWOOD BOROUGH | 1 | PASSAIC | 2297 | 2361 | 2317 | 2871 |
| TOTOWA BOROUGH | 1 | PASSAIC | 12169 | 12427 | 14989 | 13488 |
| WANAQUE BOROUGH | 1 | PASSAIC | 2032 | 1941 | 2648 | 2591 |
| WAYNE TOWNSHIP | 1 | PASSAIC | 36814 | 36892 | 41708 | 38754 |
| WEST MILFORD TOWNSHIP | 1 | PASSAIC | 4652 | 4961 | 5358 | 5800 |
| WEST PATERSON BOROUGH | 1 | PASSAIC | 5214 | 5049 | 7050 | 7100 |
| ALLOWAY TOWNSHIP | 6 | SALEM | 610 | 662 | 1033 | 1358 |
| CARNEYS POINT TOWNSHIP | 6 | SALEM | 2055 | 2628 | 4614 | 5768 |
| ELMER BOROUGH | 6 | SALEM | 1573 | 1652 | 1729 | 1877 |
| ELSINBORO TOWNSHIP | 6 | SALEM | 137 | 107 | 119 | 64 |
| LOWER ALLOWAYS CREEK TOWNSHIP | 6 | SALEM | 992 | 661 | 748 | 419 |

| MANNINGTON TOWNSHIP | 6 | SALEM | 971 | 922 | 1319 | 940 |
|---------------------------|---|----------|-------|-------|-------|-------|
| OLDMANS TOWNSHIP | 6 | SALEM | 693 | 836 | 897 | 633 |
| PENNS GROVE BOROUGH | 6 | SALEM | 1141 | 1171 | 1346 | 1193 |
| PENNSVILLE TOWNSHIP | 6 | SALEM | 4278 | 3801 | 5319 | 4116 |
| PILESGROVE TOWNSHIP | 6 | SALEM | 1007 | 1068 | 1359 | 4810 |
| PITTSGROVE TOWNSHIP | 6 | SALEM | 2781 | 2912 | 3563 | 9074 |
| QUINTON TOWNSHIP | 6 | SALEM | 148 | 125 | 268 | 203 |
| SALEM CITY | 6 | SALEM | 3151 | 3314 | 4086 | 3841 |
| UPPER PITTSGROVE TOWNSHIP | 6 | SALEM | 1010 | 1197 | 1730 | 2878 |
| WOODSTOWN BOROUGH | 6 | SALEM | 1690 | 1760 | 2214 | 2056 |
| BEDMINSTER TOWNSHIP | 3 | SOMERSET | 6776 | 7026 | 9527 | 9472 |
| BERNARDS TOWNSHIP | 3 | SOMERSET | 10729 | 10144 | 14743 | 13284 |
| BERNARDSVILLE- BOROUGH | 3 | SOMERSET | 2972 | 3127 | 4603 | 4079 |
| BOUND BROOK BOROUGH | 3 | SOMERSET | 4140 | 4061 | 4135 | 4454 |
| BRANCHBURG TOWNSHIP | 3 | SOMERSET | 8110 | 8355 | 10195 | 12736 |

| BRIDGEWATER TOWNSHIP | 3 | SOMERSET | 31557 | 33557 | 36652 | 41703 |
|----------------------------------|---|----------|-------|-------|-------|-------|
| FAR HILLS BOROUGH | 3 | SOMERSET | 891 | 905 | 1245 | 978 |
| FRANKLIN TOWNSHIP | 3 | SOMERSET | 31025 | 29971 | 39245 | 36323 |
| GREEN BROOK TOWNSHIP | 3 | SOMERSET | 3695 | 3595 | 4144 | 5003 |
| HILLSBOROUGH TOWNSHIP | 3 | SOMERSET | 7531 | 8638 | 12160 | 14515 |
| MANVILLE BOROUGH | 3 | SOMERSET | 2214 | 2285 | 2293 | 2897 |
| MILLSTONE BOROUGH | 3 | SOMERSET | 110 | 114 | 118 | 162 |
| MONTGOMERY TOWNSHIP | 3 | SOMERSET | 9020 | 8928 | 9913 | 10341 |
| NORTH PLAINFIELD BOROUGH | 3 | SOMERSET | 3770 | 3648 | 3808 | 3601 |
| PEAPACK- GLADSTONE BOROUGH | 3 | SOMERSET | 1417 | 1199 | 2138 | 1404 |
| RARITAN BOROUGH | 3 | SOMERSET | 9110 | 9161 | 11350 | 11906 |
| ROCKY HILL BOROUGH | 3 | SOMERSET | 335 | 347 | 425 | 448 |
| SOMERVILLE BOROUGH | 3 | SOMERSET | 14014 | 13381 | 14861 | 13860 |
| SOUTH BOUND BROOK BOROUGH | 3 | SOMERSET | 497 | 593 | 445 | 434 |

Page 396 40 N.J.R. 5965(a)

| WARREN TOWNSHIP | 3 | SOMERSET | 9618 | 9669 | 13015 | 15659 |
|------------------------|---|----------|------|------|-------|-------|
| WATCHUNG BOROUGH | 3 | SOMERSET | 6012 | 5855 | 6489 | 6699 |
| ANDOVER BOROUGH | 1 | SUSSEX | 1528 | 1541 | 2165 | 2175 |
| ANDOVER TOWNSHIP | 1 | SUSSEX | 871 | 884 | 1467 | 1812 |
| BRANCHVILLE BOROUGH | 1 | SUSSEX | 1671 | 1716 | 1805 | 1942 |
| BYRAM TOWNSHIP | 1 | SUSSEX | 326 | 304 | 393 | 401 |
| FRANKFORD TOWNSHIP | 1 | SUSSEX | 730 | 797 | 1127 | 993 |
| FRANKLIN BOROUGH | 1 | SUSSEX | 1301 | 1464 | 1927 | 1928 |
| FREDON TOWNSHIP | 1 | SUSSEX | 209 | 238 | 352 | 295 |
| GREEN TOWNSHIP | 1 | SUSSEX | 212 | 236 | 364 | 374 |
| HAMBURG BOROUGH | 1 | SUSSEX | 1063 | 1183 | 1520 | 1628 |
| HAMPTON TOWNSHIP | 1 | SUSSEX | 656 | 720 | 994 | 900 |
| HARDYSTON TOWNSHIP | 1 | SUSSEX | 975 | 1124 | 2027 | 3212 |
| HOPATCONG BOROUGH | 1 | SUSSEX | 1147 | 1196 | 1621 | 1543 |
| LAFAYETTE TOWNSHIP | 1 | SUSSEX | 1773 | 1973 | 2674 | 2767 |

Page 397

| MONTAGUE TOWNSHIP | 1 | SUSSEX | 556 | 575 | 1119 | 1094 |
|---------------------------------|---|--------|-------|-------|-------|-------|
| NEWTON TOWN | 1 | SUSSEX | 8305 | 9126 | 10556 | 10824 |
| OGDENSBURG BOROUGH | 1 | SUSSEX | 253 | 291 | 279 | 303 |
| SANDYSTON TOWNSHIP | 1 | SUSSEX | 153 | 157 | 250 | 277 |
| SPARTA TOWNSHIP | 1 | SUSSEX | 7045 | 8264 | 9234 | 17184 |
| STANHOPE BOROUGH | 1 | SUSSEX | 2281 | 2421 | 2634 | 3046 |
| STILLWATER TOWNSHIP | 1 | SUSSEX | 350 | 427 | 474 | 382 |
| SUSSEX BOROUGH | 1 | SUSSEX | 2190 | 2308 | 2437 | 2218 |
| VERNON TOWNSHIP | 1 | SUSSEX | 3108 | 3528 | 5154 | 5069 |
| WALPACK TOWNSHIP | 1 | SUSSEX | 97 | 102 | 106 | 567 |
| WANTAGE TOWNSHIP | 1 | SUSSEX | 826 | 753 | 1424 | 1224 |
| BERKELEY HEIGHTS TOWNSHIP | 2 | UNION | 5297 | 5275 | 6462 | 6261 |
| CLARK TOWNSHIP | 2 | UNION | 7479 | 7593 | 8480 | 9423 |
| CRANFORD TOWNSHIP | 2 | UNION | 14232 | 12628 | 14621 | 15660 |

Page 398 40 N.J.R. 5965(a)

| ELIZABETH | 2 | UNION | 45486 | 45414 | 51159 | 48383 |
|------------------------------|---|-------|-------|-------|-------|-------|
| CITY | | | | | | |
| FANWOOD BOROUGH | 2 | UNION | 1624 | 1618 | 1666 | 1620 |
| GARWOOD BOROUGH | 2 | UNION | 2285 | 2272 | 2216 | 2095 |
| HILLSIDE TOWNSHIP | 2 | UNION | 6757 | 6069 | 6847 | 6225 |
| KENILWORTH BOROUGH | 2 | UNION | 10701 | 10607 | 11830 | 13787 |
| LINDEN CITY | 2 | UNION | 20424 | 19965 | 22025 | 19005 |
| MOUNTAINSIDE BOROUGH | 2 | UNION | 5435 | 5690 | 5909 | 6578 |
| NEW PROVIDENCE BOROUGH | 2 | UNION | 9053 | 8095 | 8932 | 8139 |
| PLAINFIELD CITY | 2 | UNION | 9813 | 9807 | 10238 | 9685 |
| RAHWAY CITY | 2 | UNION | 13541 | 13192 | 14536 | 15222 |
| ROSELLE BOROUGH | 2 | UNION | 3993 | 3877 | 4272 | 3724 |
| ROSELLE PARK BOROUGH | 2 | UNION | 2348 | 2372 | 2356 | 2166 |
| SCOTCH PLAINS TOWNSHIP | 2 | UNION | 5884 | 5821 | 5968 | 6527 |
| SPRINGFIELD TOWNSHIP | 2 | UNION | 10849 | 10742 | 12538 | 10845 |
| SUMMIT | 2 | UNION | 14108 | 13979 | 15366 | 14749 |

| CITY | | | | | | |
|--------------------------------|---|--------|-------|-------|-------|-------|
| UNION TOWNSHIP | 2 | UNION | 35661 | 32434 | 33912 | 33151 |
| WESTFIELD TOWN | 2 | UNION | 10608 | 10990 | 9714 | 9688 |
| WINFIELD TOWNSHIP | 2 | UNION | 107 | 112 | 128 | 164 |
| ALLAMUCHY TOWNSHIP | 2 | WARREN | 343 | 356 | 447 | 407 |
| ALPHA BOROUGH | 2 | WARREN | 516 | 569 | 775 | 782 |
| BELVIDERE TOWN | 2 | WARREN | 2101 | 2106 | 2095 | 1826 |
| BLAIRSTOWN TOWNSHIP | 2 | WARREN | 1707 | 1751 | 2273 | 2409 |
| FRANKLIN TOWNSHIP | 2 | WARREN | 934 | 921 | 1626 | 2025 |
| FRELING- HUYSEN TOWNSHIP | 2 | WARREN | 236 | 250 | 349 | 377 |
| GREENWICH TOWNSHIP | 2 | WARREN | 653 | 745 | 1078 | 1210 |
| HACKETTS- TOWN TOWN | 2 | WARREN | 9168 | 9363 | 10335 | 11211 |
| HARDWICK TOWNSHIP | 2 | WARREN | 76 | 80 | 112 | 444 |
| HARMONY TOWNSHIP | 2 | WARREN | 218 | 234 | 301 | 235 |
| HOPE TOWNSHIP | 2 | WARREN | 304 | 317 | 272 | 209 |

Page 400 40 N.J.R. 5965(a)

| INDEPENDENCE TOWNSHIP | 2 | WARREN | 386 | 367 | 435 | 314 |
|--------------------------|-----------|--------|-------------------------------------|------------------------------------|-----------------------|---------|
| KNOWLTON TOWNSHIP | 2 | WARREN | 759 | 824 | 996 | 1046 |
| LIBERTY TOWNSHIP | 2 | WARREN | 553 | 555 | 618 | 705 |
| LOPATCONG TOWNSHIP | 2 | WARREN | 1133 | 1044 | 1299 | 1068 |
| MANSFIELD TOWNSHIP | 2 | WARREN | 1006 | 1073 | 1504 | 1361 |
| OXFORD TOWNSHIP | 2 | WARREN | 360 | 362 | 523 | 490 |
| PHILLIPSBURG TOWN | 2 | WARREN | 9054 | 9295 | 12076 | 12931 |
| POHATCONG TOWNSHIP | 2 | WARREN | 1739 | 1948 | 2909 | 3971 |
| WASHINGTON BOROUGH | 2 | WARREN | 2268 | 2261 | 2433 | 2434 |
| WASHINGTON TOWNSHIP | 2 | WARREN | 1912 | 1842 | 2262 | 1578 |
| WHITE TOWNSHIP | 2 | WARREN | 751 | 814 | 978 | 758 |
| NEW JERSEY | | | 3640016 | 3689688 | 4394382 | 4575277 |
| Source: Econsult Corpor | ration (| (2008) | | | | |
| Municipality | CO Reg | • | Employ ment Allocated 2018 | Net Changes 1 2004 - 2018 | Annual Rate of change | |

2004

| | | | | | to 2018 |
|-------------------------|---|----------|-------|------|------------|
| ABSECON CITY | 6 | ATLANTIC | 3616 | 253 | 0.52% |
| ATLANTIC CITY | 6 | ATLANTIC | 65112 | 2923 | 0.33% |
| BRIGANTINE CITY | 6 | ATLANTIC | 1953 | 39 | 0.14% |
| BUENA BOROUGH | 6 | ATLANTIC | 1755 | 399 | 1.86% |
| BUENA VISTA TOWNSHIP | 6 | ATLANTIC | 1479 | 283 | 1.53% |
| CORBIN CITY | 6 | ATLANTIC | 573 | 55 | 0.72% |
| EGG HARBOR TOWNSHIP | 6 | ATLANTIC | 19609 | 6885 | 3.14% |
| EGG HARBOR CITY | 6 | ATLANTIC | 4418 | 638 | 1.12% |
| ESTELL MANOR CITY | 6 | ATLANTIC | 401 | 85 | 1.72% |
| FOLSOM BOROUGH | 6 | ATLANTIC | 1044 | 120 | 0.88% |
| GALLOWAY TOWNSHIP | 6 | ATLANTIC | 11971 | 4162 | 3.10% |
| HAMILTON TOWNSHIP | 6 | ATLANTIC | 13394 | 2175 | 1.27% |
| HAMMONTON TOWN | 6 | ATLANTIC | 11807 | 2608 | 1.80% |
| LINWOOD CITY | 6 | ATLANTIC | 3277 | 341 | 0.79% |
| LONGPORT BOROUGH | 6 | ATLANTIC | 255 | 39 | 1.19% |
| MARGATE CITY | 6 | ATLANTIC | 1910 | 78 | 0.30% |

| MULLICA TOWNSHIP | 6 | ATLANTIC | 872 | 152 | 1.38% |
|------------------------------|---|----------|-------|------|--------|
| NORTHFIELD CITY | 6 | ATLANTIC | 5557 | 758 | 1.05% |
| PLEASANTVILLE CITY | 6 | ATLANTIC | 9151 | 1605 | 1.39% |
| PORT REPUBLIC CITY | 6 | ATLANTIC | 119 | 1 | 0.06% |
| SOMERS POINT CITY | 6 | ATLANTIC | 6804 | 438 | 0.48% |
| VENTNOR CITY | 6 | ATLANTIC | 1940 | -26 | -0.10% |
| WEYMOUTH TOWNSHIP | 6 | ATLANTIC | 220 | 1 | 0.03% |
| ALLENDALE BOROUGH | 1 | BERGEN | 6930 | -341 | -0.34% |
| ALPINE BOROUGH | 1 | BERGEN | 417 | 72 | 1.36% |
| BERGENFIELD BOROUGH | 1 | BERGEN | 4637 | 421 | 0.68% |
| BOGOTA BOROUGH | 1 | BERGEN | 2038 | 294 | 1.12% |
| CARLSTADT BOROUGH | 1 | BERGEN | 13698 | 1110 | 0.61% |
| CLIFFSIDE PARK BOROUGH | 1 | BERGEN | 3285 | 425 | 0.99% |
| CLOSTER BOROUGH | 1 | BERGEN | 3479 | 106 | 0.22% |
| CRESSKILL | 1 | BERGEN | 2107 | 274 | 1.00% |

| BOROUGH | | | | | |
|--------------------------------|---|--------|-------|------|--------|
| DEMAREST BOROUGH | 1 | BERGEN | 1142 | 142 | 0.95% |
| DUMONT BOROUGH | 1 | BERGEN | 2474 | 282 | 0.87% |
| EAST RUTHERFORD BOROUGH | 1 | BERGEN | 11137 | 1561 | 1.08% |
| EDGEWATER BOROUGH | 1 | BERGEN | 8733 | 4358 | 5.06% |
| ELMWOOD PARK BOROUGH | 1 | BERGEN | 10316 | 2965 | 2.45% |
| EMERSON BOROUGH | 1 | BERGEN | 3421 | 853 | 2.07% |
| ENGLEWOOD CITY | 1 | BERGEN | 15824 | 1916 | 0.93% |
| ENGLEWOOD CLIFFS BOROUGH | 1 | BERGEN | 9619 | 657 | 0.51% |
| FAIR LAWN BOROUGH | 1 | BERGEN | 12347 | 740 | 0.44% |
| FAIRVIEW BOROUGH | 1 | BERGEN | 4570 | 1834 | 3.73% |
| FORT LEE BOROUGH | 1 | BERGEN | 20172 | 5047 | 2.08% |
| FRANKLIN LAKES BOROUGH | 1 | BERGEN | 8326 | 114 | 0.10% |
| GARFIELD CITY | 1 | BERGEN | 7190 | 1310 | 1.45% |
| GLEN | 1 | BERGEN | 3640 | -91 | -0.18% |

| ROCK BOROUGH | | | | | |
|---------------------------------|---|--------|-------|------|-------|
| HACKENSACK CITY | 1 | BERGEN | 49827 | 4110 | 0.62% |
| HARRINGTON PARK BOROUGH | 1 | BERGEN | 856 | 87 | 0.77% |
| HASBROUCK HEIGHTS BOROUGH | 1 | BERGEN | 4689 | 780 | 1.31% |
| HAWORTH BOROUGH | 1 | BERGEN | 821 | 136 | 1.30% |
| HILLSDALE BOROUGH | 1 | BERGEN | 2550 | 139 | 0.40% |
| HO-HO-KUS BOROUGH | 1 | BERGEN | 1244 | 356 | 2.44% |
| LEONIA BOROUGH | 1 | BERGEN | 2203 | 98 | 0.33% |
| LITTLE FERRY BOROUGH | 1 | BERGEN | 3691 | 508 | 1.06% |
| LODI BOROUGH | 1 | BERGEN | 7396 | 1726 | 1.92% |
| LYNDHURST TOWNSHIP | 1 | BERGEN | 13977 | 1911 | 1.06% |
| MAHWAH TOWNSHIP | 1 | BERGEN | 21741 | 8488 | 3.60% |
| MAYWOOD BOROUGH | 1 | BERGEN | 4326 | 231 | 0.39% |
| MIDLAND PARK BOROUGH | 1 | BERGEN | 3962 | 163 | 0.30% |

| MONTVALE BOROUGH | 1 | BERGEN | 12105 | 2291 | 1.51% |
|-------------------------------|---|--------|-------|------|--------|
| MOONACHIE BOROUGH | 1 | BERGEN | 7114 | 298 | 0.31% |
| NEW MILFORD BOROUGH | 1 | BERGEN | 2049 | 340 | 1.30% |
| NORTH ARLINGTON BOROUGH | 1 | BERGEN | 3294 | 63 | 0.14% |
| NORTHVALE BOROUGH | 1 | BERGEN | 4229 | -12 | -0.02% |
| NORWOOD BOROUGH | 1 | BERGEN | 2162 | 121 | 0.41% |
| OAKLAND BOROUGH | 1 | BERGEN | 8840 | 836 | 0.71% |
| OLD TAPPAN BOROUGH | 1 | BERGEN | 2095 | 314 | 1.17% |
| ORADELL BOROUGH | 1 | BERGEN | 3404 | 511 | 1.17% |
| PALISADES PARK BOROUGH | 1 | BERGEN | 5057 | 1741 | 3.06% |
| PARAMUS BOROUGH | 1 | BERGEN | 47130 | 3574 | 0.56% |
| PARK RIDGE BOROUGH | 1 | BERGEN | 3821 | 365 | 0.72% |
| RAMSEY BOROUGH | 1 | BERGEN | 12357 | 1742 | 1.09% |
| RIDGEFIELD BOROUGH | 1 | BERGEN | 5939 | -239 | -0.28% |

| RIDGEFIELD PARK VILLAGE | 1 | BERGEN | 6252 | 2162 | 3.08% |
|-------------------------------|---|--------|-------|------|--------|
| RIDGEWOOD VILLAGE | 1 | BERGEN | 11938 | 670 | 0.41% |
| RIVER EDGE | 1 | BERGEN | 3026 | 328 | 0.82% |
| BOROUGH RIVER VALE | 1 | BERGEN | 1560 | 81 | 0.38% |
| TOWNSHIP ROCHELLE | 1 | BERGEN | 5314 | 479 | 0.68% |
| PARK TOWNSHIP | 1 | BERGEN | 3314 | 479 | 0.0070 |
| ROCKLEIGH BOROUGH | 1 | BERGEN | 2645 | 281 | 0.81% |
| RUTHERFORD BOROUGH | 1 | BERGEN | 8350 | 684 | 0.61% |
| SADDLE BROOK TOWNSHIP | 1 | BERGEN | 10940 | 1296 | 0.90% |
| SADDLE RIVER BOROUGH | 1 | BERGEN | 1321 | 304 | 1.89% |
| SOUTH HACKENSACK TOWNSHIP | 1 | BERGEN | 5399 | 572 | 0.80% |
| TEANECK TOWNSHIP | 1 | BERGEN | 15104 | 1412 | 0.70% |
| TENAFLY BOROUGH | 1 | BERGEN | 4660 | 567 | 0.93% |
| TETERBORO BOROUGH | 1 | BERGEN | 9110 | 426 | 0.34% |

| UPPER SADDLE RIVER BOROUGH | 1 | BERGEN | 4408 | 309 | 0.52% |
|------------------------------|---|------------|-------|------|-------|
| WALDWICK BOROUGH | 1 | BERGEN | 3354 | 408 | 0.93% |
| WALLINGTON BOROUGH | 1 | BERGEN | 3922 | 1561 | 3.69% |
| WASHINGTON TOWNSHIP | 1 | BERGEN | 1277 | 89 | 0.52% |
| WESTWOOD BOROUGH | 1 | BERGEN | 6151 | 468 | 0.57% |
| WOODCLIFF LAKE BOROUGH | 1 | BERGEN | 5126 | 912 | 1.41% |
| WOOD-RIDGE BOROUGH | 1 | BERGEN | 4924 | 1940 | 3.64% |
| WYCKOFF TOWNSHIP | 1 | BERGEN | 5814 | 691 | 0.91% |
| BASS RIVER TOWNSHIP | 5 | BURLINGTON | 1813 | 583 | 2.81% |
| BEVERLY CITY | 5 | BURLINGTON | 569 | 101 | 1.41% |
| BORDENTOWN CITY | 5 | BURLINGTON | 2034 | 440 | 1.76% |
| BORDENTOWN TOWNSHIP | 5 | BURLINGTON | 4842 | 279 | 0.42% |
| BURLINGTON CITY | 5 | BURLINGTON | 8331 | 2650 | 2.77% |
| BURLINGTON TOWNSHIP | 5 | BURLINGTON | 14463 | 3037 | 1.70% |
| CHESTERFIELD | 5 | BURLINGTON | 449 | 9 | 0.14% |

| TOWNSHIP | | | | | |
|----------------------------|---|------------|-------|------|-------|
| CINNAMINSON TOWNSHIP | 5 | BURLINGTON | 10155 | 2555 | 2.09% |
| DELANCO TOWNSHIP | 5 | BURLINGTON | 4263 | 1686 | 3.66% |
| DELRAN TOWNSHIP | 5 | BURLINGTON | 5997 | 1346 | 1.83% |
| EASTAMPTON TOWNSHIP | 5 | BURLINGTON | 1257 | 493 | 3.62% |
| EDGEWATER PARK TOWNSHIP | 5 | BURLINGTON | 2246 | 528 | 1.93% |
| EVESHAM TOWNSHIP | 5 | BURLINGTON | 27100 | 3233 | 0.91% |
| FIELDSBORO BOROUGH | 5 | BURLINGTON | 56 | 17 | 2.62% |
| FLORENCE TOWNSHIP | 5 | BURLINGTON | 2805 | 464 | 1.30% |
| HAINESPORT TOWNSHIP | 5 | BURLINGTON | 2524 | 708 | 2.38% |
| LUMBERTON TOWNSHIP | 5 | BURLINGTON | 6152 | 2558 | 3.91% |
| MANSFIELD TOWNSHIP | 5 | BURLINGTON | 2306 | 654 | 2.41% |
| MAPLE SHADE TOWNSHIP | 5 | BURLINGTON | 6749 | 1242 | 1.46% |
| MEDFORD TOWNSHIP | 5 | BURLINGTON | 10270 | 1613 | 1.23% |
| MEDFORD LAKES | 5 | BURLINGTON | 427 | 8 | 0.13% |

| BOROUGH | | | | | | |
|------------------------------|---|------------|-------|-------|--------|--|
| MOORESTOWN TOWNSHIP | 5 | BURLINGTON | 28494 | 3698 | 1.00% | |
| MOUNT HOLLY TOWNSHIP | 5 | BURLINGTON | 11178 | 471 | 0.31% | |
| MOUNT LAUREL TOWNSHIP | 5 | BURLINGTON | 48462 | 15489 | 2.79% | |
| NEW HANOVER TOWNSHIP | 5 | BURLINGTON | 6251 | 288 | 0.34% | |
| NORTH HANOVER TOWNSHIP | 5 | BURLINGTON | 770 | 142 | 1.47% | |
| PALMYRA BOROUGH | 5 | BURLINGTON | 2036 | 214 | 0.80% | |
| PEMBERTON BOROUGH | 5 | BURLINGTON | 283 | -40 | -0.94% | |
| PEMBERTON TOWNSHIP | 5 | BURLINGTON | 7215 | 1323 | 1.46% | |
| RIVERSIDE TOWNSHIP | 5 | BURLINGTON | 1565 | -59 | -0.26% | |
| RIVERTON BOROUGH | 5 | BURLINGTON | 716 | -154 | -1.38% | |
| SHAMONG TOWNSHIP | 5 | BURLINGTON | 985 | -59 | -0.41% | |
| SOUTHAMPTON TOWNSHIP | 5 | BURLINGTON | 2814 | 271 | 0.73% | |
| SPRINGFIELD TOWNSHIP | 5 | BURLINGTON | 987 | 290 | 2.52% | |
| TABERNACLE | 5 | BURLINGTON | 1944 | 622 | 2.79% | |

| TOWNSHIP | | | | | |
|----------------------------|---|------------|-------|------|-------|
| WASHINGTON TOWNSHIP | 5 | BURLINGTON | 556 | 175 | 2.74% |
| WESTAMPTON TOWNSHIP | 5 | BURLINGTON | 5091 | 1348 | 2.22% |
| WILLINGBORO TOWNSHIP | 5 | BURLINGTON | 9010 | 1568 | 1.38% |
| WOODLAND TOWNSHIP | 5 | BURLINGTON | 883 | 555 | 7.33% |
| WRIGHTSTOWN BOROUGH | 5 | BURLINGTON | 900 | 188 | 1.69% |
| AUDUBON BOROUGH | 5 | CAMDEN | 3170 | 557 | 1.39% |
| AUDUBON PARK BOROUGH | 5 | CAMDEN | 109 | 55 | 5.14% |
| BARRINGTON BOROUGH | 5 | CAMDEN | 1846 | 474 | 2.14% |
| BELLMAWR BOROUGH | 5 | CAMDEN | 5621 | 555 | 0.75% |
| BERLIN BOROUGH | 5 | CAMDEN | 5286 | 886 | 1.32% |
| BERLIN TOWNSHIP | 5 | CAMDEN | 8501 | 3168 | 3.39% |
| BROOKLAWN BOROUGH | 5 | CAMDEN | 1191 | 109 | 0.69% |
| CAMDEN CITY | 5 | CAMDEN | 35716 | 5268 | 1.15% |
| CHERRY HILL TOWNSHIP | 5 | CAMDEN | 57772 | 5951 | 0.78% |
| CHESILHURST BOROUGH | 5 | CAMDEN | 309 | 184 | 6.68% |

| CLEMENTON BOROUGH | 5 | CAMDEN | 3139 | 531 | 1.33% |
|------------------------------|---|--------|-------|------|--------|
| COLLINGSWOOD BOROUGH | 5 | CAMDEN | 3325 | 351 | 0.80% |
| GIBBSBORO BOROUGH | 5 | CAMDEN | 1422 | -293 | -1.33% |
| GLOUCESTER TOWNSHIP | 5 | CAMDEN | 16336 | 6298 | 3.54% |
| GLOUCESTER CITY | 5 | CAMDEN | 2873 | 205 | 0.53% |
| HADDON TOWNSHIP | 5 | CAMDEN | 3807 | 250 | 0.49% |
| HADDONFIELD BOROUGH | 5 | CAMDEN | 6236 | -181 | -0.20% |
| HADDON HEIGHTS BOROUGH | 5 | CAMDEN | 2398 | 307 | 0.98% |
| HI-NELLA BOROUGH | 5 | CAMDEN | 80 | 21 | 2.14% |
| LAUREL SPRINGS BOROUGH | 5 | CAMDEN | 860 | -104 | -0.81% |
| LAWNSIDE BOROUGH | 5 | CAMDEN | 3967 | 1218 | 2.65% |
| LINDENWOLD BOROUGH | 5 | CAMDEN | 2787 | 588 | 1.71% |
| MAGNOLIA BOROUGH | 5 | CAMDEN | 867 | 198 | 1.87% |
| MERCHANTVILLE BOROUGH | 5 | CAMDEN | 834 | -7 | -0.06% |
| MOUNT EPHRAIM | 5 | CAMDEN | 1163 | -15 | -0.09% |

| BOROUGH | | | | | |
|------------------------|---|----------|-------|------|------------|
| OAKLYN BOROUGH | 5 | CAMDEN | 821 | -29 | -0. 25% |
| PENNSAUKEN TOWNSHIP | 5 | CAMDEN | 27043 | 4020 | 1.16% |
| PINE HILL BOROUGH | 5 | CAMDEN | 1669 | 662 | 3.67% |
| PINE VALLEY BOROUGH | 5 | CAMDEN | 445 | 308 | 8.78% |
| RUNNEMEDE BOROUGH | 5 | CAMDEN | 3271 | 795 | 2.01% |
| SOMERDALE BOROUGH | 5 | CAMDEN | 2260 | 546 | 1.99% |
| STRATFORD BOROUGH | 5 | CAMDEN | 2280 | -51 | -0.16% |
| TAVISTOCK BOROUGH | 5 | CAMDEN | 1 | -2 | -7.55% |
| VOORHEES TOWNSHIP | 5 | CAMDEN | 24391 | 6834 | 2.38% |
| WATERFORD TOWNSHIP | 5 | CAMDEN | 4881 | 788 | 1.27% |
| WINSLOW TOWNSHIP | 5 | CAMDEN | 8649 | 1952 | 1.84% |
| WOODLYNNE BOROUGH | 5 | CAMDEN | 212 | 10 | 0.35% |
| AVALON BOROUGH | 6 | CAPE MAY | 1655 | -65 | -0.27% |
| CAPE MAY CITY | 6 | CAPE MAY | 5899 | 51 | 0.06% |
| CAPE MAY POINT | 6 | CAPE MAY | 261 | 11 | 0.31% |

| BOROUGH | | | | | |
|------------------------------|---|------------|-------|------|--------|
| DENNIS TOWNSHIP | 6 | CAPE MAY | 2199 | 191 | 0.65% |
| LOWER TOWNSHIP | 6 | CAPE MAY | 3396 | 17 | 0.04% |
| MIDDLE TOWNSHIP | 6 | CAPE MAY | 11369 | 1219 | 0.81% |
| NORTH WILDWOOD CITY | 6 | CAPE MAY | 1750 | -272 | -1.03% |
| OCEAN CITY | 6 | CAPE MAY | 6388 | -514 | -0.55% |
| SEA ISLE CITY | 6 | CAPE MAY | 1282 | -226 | -1.15% |
| STONE HARBOR BOROUGH | 6 | CAPE MAY | 1162 | -97 | -0.57% |
| UPPER TOWNSHIP | 6 | CAPE MAY | 4502 | 643 | 1.11% |
| WEST CAPE MAY BOROUGH | 6 | CAPE MAY | 304 | -17 | -0.39% |
| WEST WILDWOOD BOROUGH | 6 | CAPE MAY | 43 | 2 | 0.25% |
| WILDWOOD CITY | 6 | CAPE MAY | 5339 | 71 | 0.10% |
| WILDWOOD CREST BOROUGH | 6 | CAPE MAY | 2031 | -265 | -0.87% |
| WOODBINE BOROUGH | 6 | CAPE MAY | 916 | 232 | 2.11% |
| BRIDGETON | 6 | CUMBERLAND | 11209 | 2148 | 1.53% |

| CITY | | | | | |
|------------------------------|---|------------|-------|------|--------|
| COMMERCIAL TOWNSHIP | 6 | CUMBERLAND | 435 | -65 | -0.99% |
| DEERFIELD TOWNSHIP | 6 | CUMBERLAND | 987 | 299 | 2.61% |
| DOWNE TOWNSHIP | 6 | CUMBERLAND | 474 | 151 | 2.78% |
| FAIRFIELD TOWNSHIP | 6 | CUMBERLAND | 1420 | -168 | -0.80% |
| GREENWICH TOWNSHIP | 6 | CUMBERLAND | 118 | 18 | 1.19% |
| HOPEWELL TOWNSHIP | 6 | CUMBERLAND | 248 | 3 | 0.09% |
| LAWRENCE TOWNSHIP | 6 | CUMBERLAND | 2055 | 568 | 2.34% |
| MAURICE RIVER TOWNSHIP | 6 | CUMBERLAND | 604 | 135 | 1.82% |
| MILLVILLE CITY | 6 | CUMBERLAND | 10911 | 349 | 0.23% |
| SHILOH BOROUGH | 6 | CUMBERLAND | 192 | 47 | 2.03% |
| STOW CREEK TOWNSHIP | 6 | CUMBERLAND | 1026 | 358 | 3.11% |
| UPPER DEERFIELD TOWNSHIP | 6 | CUMBERLAND | 2301 | 385 | 1.32% |
| VINELAND CITY | 6 | CUMBERLAND | 32992 | 3091 | 0.71% |
| BELLEVILLE | 2 | ESSEX | 10305 | 980 | 0.72% |
| | | | | | |

| TOWNSHIP | | | | | |
|-------------------------------|---|-------|--------|-------|-------|
| BLOOMFIELD TOWNSHIP | 2 | ESSEX | 15859 | 2630 | 1.30% |
| CALDWELL BOROUGH | 2 | ESSEX | 3140 | 667 | 1.72% |
| CEDAR GROVE TOWNSHIP | 2 | ESSEX | 7800 | 2042 | 2.19% |
| CITY OF ORANGE TOWNSHIP | 2 | ESSEX | 6572 | 325 | 0.36% |
| EAST ORANGE CITY | 2 | ESSEX | 18614 | 2555 | 1.06% |
| ESSEX FELLS BOROUGH | 2 | ESSEX | 365 | 154 | 3.99% |
| FAIRFIELD TOWNSHIP | 2 | ESSEX | 26227 | 2994 | 0.87% |
| GLEN RIDGE BOROUGH | 2 | ESSEX | 1167 | 134 | 0.88% |
| IRVINGTON TOWNSHIP | 2 | ESSEX | 12377 | 2929 | 1.95% |
| LIVINGSTON TOWNSHIP | 2 | ESSEX | 25366 | 2844 | 0.85% |
| MAPLEWOOD TOWNSHIP | 2 | ESSEX | 5307 | 329 | 0.46% |
| MILLBURN TOWNSHIP | 2 | ESSEX | 17703 | 494 | 0.20% |
| MONTCLAIR TOWNSHIP | 2 | ESSEX | 14191 | 1459 | 0.78% |
| NEWARK CITY | 2 | ESSEX | 163090 | 30712 | 1.50% |
| NORTH | 2 | ESSEX | 974 | 427 | 4.21% |

| CALDWELL BOROUGH | | | | | |
|-------------------------------------|---|------------|-------|------|--------|
| NUTLEY TOWNSHIP | 2 | ESSEX | 11738 | 803 | 0.51% |
| ROSELAND BOROUGH | 2 | ESSEX | 11834 | 1465 | 0.95% |
| SOUTH ORANGE VILLAGE TOWNSHIP | 2 | ESSEX | 6088 | 528 | 0.65% |
| VERONA TOWNSHIP | 2 | ESSEX | 4340 | 309 | 0.53% |
| WEST CALDWELL TOWNSHIP | 2 | ESSEX | 9890 | 2045 | 1.67% |
| WEST ORANGE TOWNSHIP | 2 | ESSEX | 19576 | 2475 | 0.97% |
| CLAYTON BOROUGH | 5 | GLOUCESTER | 1081 | 96 | 0.67% |
| DEPTFORD TOWNSHIP | 5 | GLOUCESTER | 14114 | 2808 | 1.60% |
| EAST GREENWICH TOWNSHIP | 5 | GLOUCESTER | 2093 | 578 | 2.34% |
| ELK TOWNSHIP | 5 | GLOUCESTER | 726 | 173 | 1.96% |
| FRANKLIN TOWNSHIP | 5 | GLOUCESTER | 2960 | 532 | 1.43% |
| GLASSBORO BOROUGH | 5 | GLOUCESTER | 7801 | 2125 | 2.30% |
| GREENWICH TOWNSHIP | 5 | GLOUCESTER | 1128 | -10 | -0.06% |

| HARRISON TOWNSHIP | 5 | GLOUCESTER | 4006 | 1702 | 4.03% |
|-------------------------------|---|------------|-------|------|--------|
| LOGAN TOWNSHIP | 5 | GLOUCESTER | 5794 | 1804 | 2.70% |
| MANTUA TOWNSHIP | 5 | GLOUCESTER | 14000 | 5228 | 3.40% |
| MONROE TOWNSHIP | 5 | GLOUCESTER | 9065 | 1995 | 1.79% |
| NATIONAL PARK | 5 | GLOUCESTER | 388 | 73 | 1.50% |
| BOROUGH NEWFIELD BOROUGH | 5 | GLOUCESTER | 896 | -170 | -1.23% |
| PAULSBORO BOROUGH | 5 | GLOUCESTER | 4646 | 1050 | 1.85% |
| PITMAN BOROUGH | 5 | GLOUCESTER | 2686 | 196 | 0.54% |
| SOUTH HARRISON TOWNSHIP | 5 | GLOUCESTER | 297 | -166 | -3.12% |
| SWEDESBOR0 BOROUGH | 5 | GLOUCESTER | 7584 | 1198 | 1.24% |
| WASHINGTON TOWNSHIP | 5 | GLOUCESTER | 12648 | 1380 | 0.83% |
| WENONAH BOROUGH | 5 | GLOUCESTER | 787 | 82 | 0.79% |
| WEST DEPTFORD TOWNSHIP | 5 | GLOUCESTER | 12154 | 3338 | 2.32% |
| WESTVILLE BOROUGH | 5 | GLOUCESTER | 2737 | 125 | 0.33% |

| WOODBURY CITY | 5 | GLOUCESTER | 11612 | 113 | 0.07% | |
|--------------------------------|---|------------|--------|-------|--------|--|
| WOODBURY HEIGHTS BOROUGH | 5 | GLOUCESTER | 2317 | 292 | 0.97% | |
| WOOLWICH TOWNSHIP | 5 | GLOUCESTER | 2828 | 2016 | 9.32% | |
| BAYONNE CITY | 1 | HUDSON | 19181 | 4207 | 1.78% | |
| EAST NEWARK BOROUGH | 1 | HUDSON | 725 | -18 | -0.18% | |
| GUTTENBERG TOWN | 1 | HUDSON | 1357 | 58 | 0.31% | |
| HARRISON TOWN | 1 | HUDSON | 4769 | 1032 | 1.76% | |
| HOBOKEN CITY | 1 | HUDSON | 16401 | 1913 | 0.89% | |
| JERSEY CITY | 1 | HUDSON | 130369 | 32741 | 2.09% | |
| KEARNY TOWN | 1 | HUDSON | 19550 | 3342 | 1.35% | |
| NORTH BERGEN TOWNSHIP | 1 | HUDSON | 22551 | 3468 | 1.20% | |
| SECAUCUS TOWN | 1 | HUDSON | 40533 | 4055 | 0.76% | |
| UNION CITY | 1 | HUDSON | 14305 | 3561 | 2.07% | |
| WEEHAWKEN TOWNSHIP | 1 | HUDSON | 10946 | 2723 | 2.06% | |
| WEST NEW YORK TOWN | 1 | HUDSON | 7983 | 975 | 0.93% | |
| ALEXANDRIA TOWNSHIP | 3 | HUNTERDON | 443 | 148 | 2.95% | |
| BETHLEHEM TOWNSHIP | 3 | HUNTERDON | 373 | 44 | 0.90% | |
| BLOOMSBURY | 3 | HUNTERDON | 653 | -17 | -0.18% | |

| BOROUGH | | | | | |
|-------------------------|---|-----------|------|------|--------|
| CALIFON BOROUGH | 3 | HUNTERDON | 930 | 40 | 0.31% |
| CLINTON TOWN | 3 | HUNTERDON | 3839 | 1544 | 3.74% |
| CLINTON TOWNSHIP | 3 | HUNTERDON | 5961 | 1644 | 2.33% |
| DELAWARE TOWNSHIP | 3 | HUNTERDON | 457 | 142 | 2.69% |
| EAST AMWELL TOWNSHIP | 3 | HUNTERDON | 1411 | 199 | 1.09% |
| FLEMINGTON BOROUGH | 3 | HUNTERDON | 7280 | 321 | 0.32% |
| FRANKLIN TOWNSHIP | 3 | HUNTERDON | 1631 | 452 | 2.35% |
| FRENCHTOWN BOROUGH | 3 | HUNTERDON | 879 | 2 | 0.02% |
| GLEN GARDNER BOROUGH | 3 | HUNTERDON | 587 | 26 | 0.32% |
| HAMPTON BOROUGH | 3 | HUNTERDON | 956 | 303 | 2.76% |
| HIGH BRIDGE BOROUGH | 3 | HUNTERDON | 811 | 223 | 2.32% |
| HOLLAND TOWNSHIP | 3 | HUNTERDON | 155 | -64 | -2.44% |
| KINGWOOD TOWNSHIP | 3 | HUNTERDON | 464 | 128 | 2.33% |
| LAMBERTVILLE CITY | 3 | HUNTERDON | 2855 | 929 | 2.85% |
| LEBANON BOROUGH | 3 | HUNTERDON | 2354 | 270 | 0.87% |
| LEBANON | 3 | HUNTERDON | 1103 | 73 | 0.49% |

| TOWNSHIP | | | | | |
|--------------------------|---|-----------|-------|------|--------|
| MILFORD BOROUGH | 3 | HUNTERDON | 915 | -62 | -0.47% |
| RARITAN TOWNSHIP | 3 | HUNTERDON | 12335 | 3882 | 2.74% |
| READINGTON TOWNSHIP | 3 | HUNTERDON | 8322 | 159 | 0.14% |
| STOCKTON BOROUGH | 3 | HUNTERDON | 505 | 61 | 0.92% |
| TEWKSBURY TOWNSHIP | 3 | HUNTERDON | 1485 | 651 | 4.20% |
| UNION TOWNSHIP | 3 | HUNTERDON | 1111 | 22 | 0.14% |
| WEST AMWELL TOWNSHIP | 3 | HUNTERDON | 321 | 79 | 2.04% |
| EAST WINDSOR TOWNSHIP | 4 | MERCER | 9799 | 2651 | 2.28% |
| EWING TOWNSHIP | 4 | MERCER | 18889 | 4496 | 1.96% |
| HAMILTON TOWNSHIP | 4 | MERCER | 36057 | 7712 | 1.73% |
| HIGHTSTOWN BOROUGH | 4 | MERCER | 4262 | 710 | 1.31% |
| HOPEWELL BOROUGH | 4 | MERCER | 953 | 307 | 2.82% |
| HOPEWELL TOWNSHIP | 4 | MERCER | 8465 | 4064 | 4.78% |
| LAWRENCE TOWNSHIP | 4 | MERCER | 30029 | 6512 | 1.76% |
| PENNINGTON | 4 | MERCER | 5027 | 335 | 0.49% |

| BOROUGH | | | | | |
|-------------------------------|---|-----------|-------|------|--------|
| PRINCETON BOROUGH | 4 | MERCER | 24451 | 2845 | 0.89% |
| PRINCETON TOWNSHIP | 4 | MERCER | 11742 | 886 | 0.56% |
| TRENTON CITY | 4 | MERCER | 39856 | 7713 | 1.55% |
| WASHINGTON TOWNSHIP | 4 | MERCER | 7368 | 1346 | 1.45% |
| WEST WINDSOR TOWNSHIP | 4 | MERCER | 27157 | 7848 | 2.47% |
| CARTERET BOROUGH | 3 | MIDDLESEX | 10086 | 1067 | 0.80% |
| CRANBURY TOWNSHIP | 3 | MIDDLESEX | 13975 | 3581 | 2.14% |
| DUNELLEN BOROUGH | 3 | MIDDLESEX | 1189 | -45 | -0.26% |
| EAST BRUNSWICK TOWNSHIP | 3 | MIDDLESEX | 25961 | 3869 | 1.16% |
| EDISON TOWNSHIP | 3 | MIDDLESEX | 85847 | 9440 | 0.84% |
| HELMETTA BOROUGH | 3 | MIDDLESEX | 317 | 113 | 3.20% |
| HIGHLAND PARK BOROUGH | 3 | MIDDLESEX | 3190 | 728 | 1.87% |
| JAMESBURG BOROUGH | 3 | MIDDLESEX | 3764 | -643 | -1.12% |
| METUCHEN BOROUGH | 3 | MIDDLESEX | 7264 | 1151 | 1.24% |

| MIDDLESEX BOROUGH | 3 | MIDDLESEX | 6504 | 326 | 0.37% |
|--------------------------------|---|-----------|-------|------|--------|
| MILLTOWN BOROUGH | 3 | MIDDLESEX | 2726 | -194 | -0.49% |
| MONROE TOWNSHIP | 3 | MIDDLESEX | 14743 | 9531 | 7.71% |
| NEW BRUNSWICK CITY | 3 | MIDDLESEX | 37565 | 2917 | 0.58% |
| NORTH BRUNSWICK TOWNSHIP | 3 | MIDDLESEX | 23972 | 6144 | 2.14% |
| OLD BRIDGE TOWNSHIP | 3 | MIDDLESEX | 14983 | 3496 | 1.92% |
| PERTH AMBOY CITY | 3 | MIDDLESEX | 13217 | 963 | 0.54% |
| PISCATAWAY TOWNSHIP | 3 | MIDDLESEX | 34559 | 1866 | 0.40% |
| PLAINSBORO TOWNSHIP | 3 | MIDDLESEX | 15657 | 2857 | 1.45% |
| SAYREVILLE BOROUGH | 3 | MIDDLESEX | 9553 | 1951 | 1.65% |
| SOUTH AMBOY CITY | 3 | MIDDLESEX | 3151 | 394 | 0.96% |
| SOUTH BRUNSWICK TOWNSHIP | 3 | MIDDLESEX | 25875 | 5178 | 1.61% |
| SOUTH PLAINFIELD BOROUGH | 3 | MIDDLESEX | 22627 | 3131 | 1.07% |
| SOUTH RIVER BOROUGH | 3 | MIDDLESEX | 4485 | 1075 | 1.98% |

| SPOTSWOOD BOROUGH | 3 | MIDDLESEX | 2798 | 170 | 0.45% |
|----------------------------------|---|---------------|-------|------|--------|
| WOODBRIDGE TOWNSHIP | 3 | MIDDLESEX | 55196 | 6893 | 0.96% |
| ABERDEEN TOWNSHIP | 4 | MONMOUTH | 6776 | 1935 | 2.43% |
| ALLENHURST BOROUGH | 4 | MONMOUTH | 382 | -181 | -2.73% |
| ALLENTOWN BOROUGH | 4 | MONMOUTH | 1792 | -61 | -0.24% |
| ASBURY PARK CITY | 4 | MONMOUTH | 4487 | 1102 | 2.03% |
| ATLANTIC HIGHLANDS BOROUGH | 4 | MONMOUTH | 2729 | 602 | 1.80% |
| AVON-BY- THE-SEA BOROUGH | 4 | MONMOUTH | 443 | -7 | -0.11% |
| BELMAR BOROUGH | 4 | MONMOUTH | 2211 | 156 | 0.52% |
| BRADLEY BEACH BOROUGH | 4 | MONMOUTH | 898 | 15 | 0.12% |
| BRIELLE BOROUGH | 4 | MONMOUTH | 1436 | 120 | 0.63% |
| COLTS NECK TOWNSHIP | 4 | MONMOUTH | 3084 | 166 | 0.40% |
| DEAL BOROUGH | 4 | MONMOUTH | 626 | -90 | -0.95% |
| EATONTOWN BOROUGH | 4 | MONMOUTH H | 19841 | 6955 | 3.13% |
| ENGLISHTOWN | 4 | MONMOUTH | 3222 | 400 | 0.95% |

| BOROUGH | | | | | |
|--------------------------|---|----------|-------|------|--------|
| FAIR HAVEN BOROUGH | 4 | MONMOUTH | 1263 | -105 | -0.57% |
| FARMINGDALE BOROUGH | 4 | MONMOUTH | 4692 | 804 | 1.35% |
| FREEHOLD BOROUGH | 4 | MONMOUTH | 16453 | 158 | 0.07% |
| FREEHOLD TOWNSHIP | 4 | MONMOUTH | 18635 | 5075 | 2.30% |
| HAZLET TOWNSHIP | 4 | MONMOUTH | 8032 | 1289 | 1.26% |
| HIGHLANDS BOROUGH | 4 | MONMOUTH | 1373 | 440 | 2.80% |
| HOLMDEL TOWNSHIP | 4 | MONMOUTH | 11001 | 1009 | 0.69% |
| HOWELL TOWNSHIP | 4 | MONMOUTH | 16913 | 7213 | 4.05% |
| INTERLAKEN BOROUGH | 4 | MONMOUTH | 52 | 25 | 4.79% |
| KEANSBURG BOROUGH | 4 | MONMOUTH | 1532 | 94 | 0.45% |
| KEYPORT BOROUGH | 4 | MONMOUTH | 3136 | 583 | 1.48% |
| LITTLE SILVER BOROUGH | 4 | MONMOUTH | 2346 | 16 | 0.05% |
| LOCH ARBOUR VILLAGE | 4 | MONMOUTH | 64 | 1 | 0.11% |
| LONG BRANNCH CITY | 4 | MONMOUTH | 11269 | 2164 | 1.53% |
| MANALAPAN TOWNSHIP | 4 | MONMOUTH | 11785 | 2089 | 1.40% |
| MANASQUAN | 4 | MONMOUTH | 5954 | -239 | -0.28% |

| BOROUGH | | | | | |
|--------------------------|---|----------|-------|------|--------|
| MARLBORO TOWNSHIP | 4 | MONMOUTH | 12852 | 4684 | 3.29% |
| MATAWAN BOROUGH | 4 | MONMOUTH | 4661 | 242 | 0.38% |
| MIDDLETOWN TOWNSHIP | 4 | MONMOUTH | 19727 | 3731 | 1.51% |
| MILLSTONE TOWNSHIP | 4 | MONMOUTH | 2616 | 1189 | 4.42% |
| MONMOUTH BEACH | 4 | MONMOUTH | 698 | 76 | 0.83% |
| BOROUGH NEPTUNE TOWNSHIP | 4 | MONMOUTH | 15600 | 3276 | 1.70% |
| NEPTUNE CITY BOROUGH | 4 | MONMOUTH | 7232 | 321 | 0.32% |
| OCEAN TOWNSHIP | 4 | MONMOUTH | 12270 | 2754 | 1.83% |
| OCEANPORT BOROUGH | 4 | MONMOUTH | 8113 | 575 | 0.53% |
| RED BANK BOROUGH | 4 | MONMOUTH | 16982 | 2211 | 1.00% |
| ROOSEVELT BOROUGH | 4 | MONMOUTH | 117 | 18 | 1.20% |
| RUMSON BOROUGH | 4 | MONMOUTH | 1596 | 115 | 0.54% |
| SEA BRIGHT BOROUGH | 4 | MONMOUTH | 822 | -94 | -0.77% |
| SEA GIRT BOROUGH | 4 | MONMOUTH | 2027 | 71 | 0.26% |
| SHREWSBURY | 4 | MONMOUTH | 4952 | 326 | 0.49% |

| BOROUGH | | | | | |
|--------------------------------|---|----------|-------|------|--------|
| SHREWSBURY TOWNSHIP | 4 | MONMOUTH | 1615 | -5 | -0.02% |
| LAKE COMO BOROUGH | 4 | MONMOUTH | 354 | -28 | -0.54% |
| SPRING LAKE BOROUGH | 4 | MONMOUTH | 1124 | 35 | 0.23% |
| SPRING LAKE HEIGHTS BOROUGH | 4 | MONMOUTH | 1530 | 90 | 0.43% |
| TINTON FALLS BOROUGH | 4 | MONMOUTH | 13008 | 5772 | 4.28% |
| UNION BEACH BOROUGH | 4 | MONMOUTH | 1087 | 138 | 0.97% |
| UPPER FREEHOLD TOWNSHIP | 4 | MONMOUTH | 2121 | 456 | 1.74% |
| WALL TOWNSHIP | 4 | MONMOUTH | 15741 | 6450 | 3.84% |
| WEST LONG BRANCH BOROUGH | 4 | MONMOUTH | 6060 | 205 | 0.25% |
| BOONTON TOWN | 2 | MORRIS | 3404 | 130 | 0.28% |
| BOONTON TOWNSHIP | 2 | MORRIS | 1972 | 395 | 1.61% |
| BUTLER BOROUGH | 2 | MORRIS | 3253 | 332 | 0.77% |
| CHATHAM BOROUGH | 2 | MORRIS | 4151 | -14 | -0.02% |
| CHATHAM TOWNSHIP | 2 | MORRIS | 2041 | 356 | 1.38% |

| CHESTER BOROUGH | 2 | MORRIS | 3585 | 735 | 1.65% |
|--------------------------|---|--------|-------|------|-------|
| CHESTER TOWNSHIP | 2 | MORRIS | 1361 | 203 | 1.16% |
| DENVILLE TOWNSHIP | 2 | MORRIS | 11254 | 1976 | 1.39% |
| DOVER TOWN | 2 | MORRIS | 8574 | 1603 | 1.49% |
| EAST HANOVER TOWNSHIP | 2 | MORRIS | 16942 | 2243 | 1.02% |
| FLORHAM PARK BOROUGH | 2 | MORRIS | 19266 | 5560 | 2.46% |
| HANOVER TOWNSHIP | 2 | MORRIS | 20612 | 4108 | 1.60% |
| HARDING TOWNSHIP | 2 | MORRIS | 976 | 98 | 0.76% |
| JEFFERSON TOWNSHIP | 2 | MORRIS | 3495 | 966 | 2.34% |
| KINNELON BOROUGH | 2 | MORRIS | 2038 | 104 | 0.37% |
| LINCOLN PARK BOROUGH | 2 | MORRIS | 4027 | 463 | 0.88% |
| LONG HILL TOWNSHIP | 2 | MORRIS | 3486 | 803 | 1.89% |
| MADISON BOROUGH | 2 | MORRIS | 12022 | 3203 | 2.24% |
| MENDHAM BOROUGH | 2 | MORRIS | 3086 | 1350 | 4.19% |
| MENDHAM TOWNSHIP | 2 | MORRIS | 1158 | 350 | 2.60% |
| MINE HILL | 2 | MORRIS | 1205 | 665 | 5.90% |

| TOWNSHIP | | | | | |
|---------------------------------------|---|--------|-------|-------|--------|
| MONTVILLE TOWNSHIP | 2 | MORRIS | 13155 | 1898 | 1.12% |
| MORRIS TOWNSHIP | 2 | MORRIS | 3964 | 435 | 0.83% |
| MORRIS PLAINS BOROUGH | 2 | MORRIS | 11788 | 1842 | 1.22% |
| MORRISTOWN TOWN | 2 | MORRIS | 32543 | -1402 | -0.30% |
| MOUNTAIN LAKES BOROUGH | 2 | MORRIS | 3795 | 1060 | 2.37% |
| MOUNT ARLINGTON BOROUGH | 2 | MORRIS | 1678 | 439 | 2.19% |
| MOUNT OLIVE TOWNSHIP | 2 | MORRIS | 15952 | 4796 | 2.59% |
| NETCONG BOROUGH | 2 | MORRIS | 1045 | 178 | 1.34% |
| PARSIPPANY- TROY HILLS TOWNSHIP | 2 | MORRIS | 79011 | 25020 | 2.76% |
| PEQUANNOCK TOWNSHIP | 2 | MORRIS | 8027 | 1627 | 1.63% |
| RANDOLPH TOWNSHIP | 2 | MORRIS | 9826 | 2170 | 1.80% |
| RIVERDALE BOROUGH | 2 | MORRIS | 4369 | 1528 | 3.12% |
| ROCKAWAY BOROUGH | 2 | MORRIS | 7432 | 855 | 0.88% |
| ROCKAWAY TOWNSHIP | 2 | MORRIS | 13604 | 3315 | 2.01% |

| ROXBURY TOWNSHIP | 2 | MORRIS | 11588 | 2986 | 2.15% |
|-------------------------------|---|--------|-------|------|--------|
| VICTORY GARDENS BOROUGH | 2 | MORRIS | 113 | 13 | 0.84% |
| WASHINGTON TOWNSHIP | 2 | MORRIS | 3478 | 1288 | 3.36% |
| WHARTON BOROUGH | 2 | MORRIS | 4513 | 1288 | 2.43% |
| BARNEGAT TOWNSHIP | 4 | OCEAN | 4104 | 1967 | 4.77% |
| BARNEGAT LIGHT BOROUGH | 4 | OCEAN | 403 | -2 | -0.04% |
| BAY HEAD BOROUGH | 4 | OCEAN | 351 | -117 | -2.03% |
| BEACH HAVEN BOROUGH | 4 | OCEAN | 1552 | -236 | -1.01% |
| BEACHWOOD BOROUGH | 4 | OCEAN | 959 | 170 | 1.40% |
| BERKELEY TOWNSHIP | 4 | OCEAN | 6803 | 2005 | 2.53% |
| BRICK TOWNSHIP | 4 | OCEAN | 23469 | 4680 | 1.60% |
| TOMS RIVER TOWNSHIP | 4 | OCEAN | 49154 | 8160 | 1.31% |
| EAGLESWOOD TOWNSHIP | 4 | OCEAN | 1864 | 1225 | 7.95% |
| HARVEY CEDARS BOROUGH | 4 | OCEAN | 240 | -19 | -0.54% |
| ISLAND | 4 | OCEAN | 358 | 27 | 0.56% |

| HEIGHTS BOROUGH | | | | | |
|----------------------------------|---|-------|-------|------|--------|
| JACKSON TOWNSHIP | 4 | OCEAN | 11837 | 2894 | 2.02% |
| LACEY TOWNSHIP | 4 | OCEAN | 7890 | 2425 | 2.66% |
| LAKEHURST BOROUGH | 4 | OCEAN | 3046 | -67 | -0.16% |
| LAKEWOOD TOWNSHIP | 4 | OCEAN | 31937 | 7572 | 1.95% |
| LAVALLETTE BOROUGH | 4 | OCEAN | 863 | -19 | -0.16% |
| LITTLE EGG HARBOR TOWNSHIP | 4 | OCEAN | 4376 | 1901 | 4.15% |
| LONG BEACH TOWNSHIP | 4 | OCEAN | 1370 | -84 | -0.42% |
| MANCHESTER TOWNSHIP | 4 | OCEAN | 7216 | 3594 | 5.05% |
| MANTOLOKING BOROUGH | 4 | OCEAN | 159 | -25 | -1.04% |
| OCEAN TOWNSHIP | 4 | OCEAN | 1727 | 748 | 4.14% |
| OCEAN GATE BOROUGH | 4 | OCEAN | 129 | 40 | 2.69% |
| PINE BEACH BOROUGH | 4 | OCEAN | 325 | 224 | 8.71% |
| PLUMSTED TOWNSHIP | 4 | OCEAN | 1833 | 210 | 0.87% |
| POINT PLEASANT BOROUGH | 4 | OCEAN | 3613 | -343 | -0.65% |

| POINT PLEASANT BEACH BOROUGH | 4 | OCEAN | 3939 | -133 | -0.24% |
|-------------------------------|---|---------|-------|------|--------|
| SEASIDE HEIGHTS BOROUGH | 4 | OCEAN | 1310 | -100 | -0.52% |
| SEASIDE PARK BOROUGH | 4 | OCEAN | 1008 | -74 | -0.50% |
| SHIP BOTTOM BOROUGH | 4 | OCEAN | 1166 | -73 | -0.43% |
| SOUTH TOMS RIVER BOROUGH | 4 | OCEAN | 666 | 219 | 2.89% |
| STAFFORD TOWNSHIP | 4 | OCEAN | 11897 | 3133 | 2.21% |
| SURF CITY BOROUGH | 4 | OCEAN | 589 | -22 | -0.26% |
| TUCKERTON BOROUGH | 4 | OCEAN | 1179 | 52 | 0.32% |
| BLOOMING- DALE BOROUGH | 1 | PASSAIC | 1594 | 259 | 1.27% |
| CLIFTON CITY | 1 | PASSAIC | 38659 | 6761 | 1.38% |
| HALEDON BOROUGH | 1 | PASSAIC | 2315 | 706 | 2.64% |
| HAWTHORNE BOROUGH | 1 | PASSAIC | 7500 | 1808 | 1.99% |
| LITTLE FALLS TOWNSHIP | 1 | PASSAIC | 6770 | 1205 | 1.41% |

| NORTH HALEDON BOROUGH | 1 | PASSAIC | 2662 | 921 | 3.08% |
|------------------------------|---|---------|-------|------|--------|
| PASSAIC CITY | 1 | PASSAIC | 22530 | 4258 | 1.51% |
| PATERSON CITY | 1 | PASSAIC | 44556 | 6500 | 1.13% |
| POMPTON LAKES BOROUGH | 1 | PASSAIC | 2650 | 433 | 1.28% |
| PROSPECT PARK BOROUGH | 1 | PASSAIC | 1268 | 135 | 0.80% |
| RINGWOOD BOROUGH | 1 | PASSAIC | 2317 | -44 | -0.13% |
| TOTOWA BOROUGH | 1 | PASSAIC | 15073 | 2646 | 1.39% |
| WANAQUE BOROUGH | 1 | PASSAIC | 2955 | 1014 | 3.05% |
| WAYNE TOWNSHIP | 1 | PASSAIC | 44168 | 7276 | 1.29% |
| WEST MILFORD TOWNSHIP | 1 | PASSAIC | 5358 | 397 | 0.55% |
| WEST PATERSON BOROUGH | 1 | PASSAIC | 7793 | 2744 | 3.15% |
| ALLOWAY TOWNSHIP | 6 | SALEM | 907 | 245 | 2.27% |
| CARNEYS POINT TOWNSHIP | 6 | SALEM | 4048 | 1420 | 3.13% |

40 N.J.R. 5965(a)

| ELMER BOROUGH | 6 | SALEM | 1697 | 45 | 0.19% |
|-------------------------------|---|----------|-------|------|--------|
| ELSINBORO TOWNSHIP | 6 | SALEM | 76 | -31 | -2.38% |
| LOWER ALLOWAYS CREEK TOWNSHIP | 6 | SALEM | 470 | -191 | -2.41% |
| MANNINGTON TOWNSHIP | 6 | SALEM | 872 | -50 | -0.39% |
| OLDMANS TOWNSHIP | 6 | SALEM | 582 | -254 | -2.55% |
| PENNS GROVE BOROUGH | 6 | SALEM | 1133 | -38 | -0.24% |
| PENNSVILLE TOWNSHIP | 6 | SALEM | 3960 | 159 | 0.29% |
| PILESGROVE TOWNSHIP | 6 | SALEM | 1528 | 460 | 2.59% |
| PITTSGROVE TOWNSHIP | 6 | SALEM | 3777 | 866 | 1.88% |
| QUINTON TOWNSHIP | 6 | SALEM | 178 | 53 | 2.56% |
| SALEM CITY | 6 | SALEM | 3370 | 56 | 0.12% |
| UPPER PITTSGROVE TOWNSHIP | 6 | SALEM | 1518 | 321 | 1.71% |
| WOODSTOWN BOROUGH | 6 | SALEM | 1804 | 44 | 0.18% |
| BEDMINSTER TOWNSHIP | 3 | SOMERSET | 9540 | 2514 | 2.21% |
| BERNARDS | 3 | SOMERSET | 13719 | 3575 | 2.18% |

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| BERNARDSVILLE- BOROUGH | 3 | SOMERSET | 4108 | 981 | 1.97% |
|----------------------------------|---|----------|-------|------|-------|
| BOUND BROOK BOROUGH | 3 | SOMERSET | 4226 | 165 | 0.28% |
| BRANCHBURG TOWNSHIP | 3 | SOMERSET | 11277 | 2922 | 2.17% |
| BRIDGEWATER TOWNSHIP | 3 | SOMERSET | 39973 | 6416 | 1.26% |
| FAR HILLS BOROUGH | 3 | SOMERSET | 985 | 80 | 0.61% |
| FRANKLIN TOWNSHIP | 3 | SOMERSET | 36824 | 6853 | 1.48% |
| GREEN BROOK TOWNSHIP | 3 | SOMERSET | 4352 | 757 | 1.37% |
| HILLSBOROUGH TOWNSHIP | 3 | SOMERSET | 13251 | 4613 | 3.10% |
| MANVILLE BOROUGH | 3 | SOMERSET | 2513 | 228 | 0.68% |
| MILLSTONE BOROUGH | 3 | SOMERSET | 126 | 12 | 0.72% |
| MONTGOMERY TOWNSHIP | 3 | SOMERSET | 10098 | 1170 | 0.88% |
| NORTH PLAINFIELD BOROUGH | 3 | SOMERSET | 3767 | 119 | 0.23% |
| PEAPACK- GLADSTONE BOROUGH | 3 | SOMERSET | 1460 | 261 | 1.42% |
| RARITAN BOROUGH | 3 | SOMERSET | 11528 | 2367 | 1.66% |

| ROCKY HILL BOROUGH | 3 | SOMERSET | 444 | 97 | 1.78% |
|---------------------------------|---|----------|-------|------|--------|
| SOMERVILLE BOROUGH | 3 | SOMERSET | 14419 | 1038 | 0.54% |
| SOUTH BOUND BROOK BOROUGH | 3 | SOMERSET | 456 | -137 | -1.86% |
| WARREN TOWNSHIP | 3 | SOMERSET | 13015 | 3346 | 2.15% |
| WATCHUNG BOROUGH | 3 | SOMERSET | 6604 | 749 | 0.86% |
| ANDOVER BOROUGH | 1 | SUSSEX | 2227 | 686 | 2.67% |
| ANDOVER TOWNSHIP | 1 | SUSSEX | 1616 | 732 | 4.40% |
| BRANCHVILLE BOROUGH | 1 | SUSSEX | 1846 | 130 | 0.52% |
| BYRAM TOWNSHIP | 1 | SUSSEX | 414 | 110 | 2.23% |
| FRANKFORD TOWNSHIP | 1 | SUSSEX | 1016 | 219 | 1.75% |
| FRANKLIN BOROUGH | 1 | SUSSEX | 2044 | 580 | 2.41% |
| FREDON TOWNSHIP | 1 | SUSSEX | 315 | 77 | 2.02% |
| GREEN TOWNSHIP | 1 | SUSSEX | 373 | 137 | 3.32% |
| HAMBURG BOROUGH | 1 | SUSSEX | 1650 | 467 | 2.41% |
| HAMPTON TOWNSHIP | 1 | SUSSEX | 990 | 270 | 2.30% |
| HARDYSTON | 1 | SUSSEX | 2575 | 1451 | 6.10% |

| TOWNSHIP | | | | | |
|---------------------------------|---|--------|-------|------|--------|
| HOPATCONG BOROUGH | 1 | SUSSEX | 1605 | 409 | 2.12% |
| LAFAYETTE TOWNSHIP | 1 | SUSSEX | 2921 | 948 | 2.84% |
| MONTAGUE TOWNSHIP | 1 | SUSSEX | 1119 | 544 | 4.87% |
| NEWTON TOWN | 1 | SUSSEX | 11234 | 2108 | 1.50% |
| OGDENSBURG BOROUGH | 1 | SUSSEX | 279 | -12 | -0.30% |
| SANDYSTON TOWNSHIP | 1 | SUSSEX | 271 | 114 | 3.98% |
| SPARTA TOWNSHIP | 1 | SUSSEX | 9234 | 970 | 0.80% |
| STANHOPE BOROUGH | 1 | SUSSEX | 2944 | 523 | 1.41% |
| STILLWATER TOWNSHIP | 1 | SUSSEX | 440 | 13 | 0.21% |
| SUSSEX BOROUGH | 1 | SUSSEX | 2453 | 145 | 0.44% |
| VERNON TOWNSHIP | 1 | SUSSEX | 5186 | 1658 | 2.79% |
| WALPACK TOWNSHIP | 1 | SUSSEX | 106 | 5 | 0.31% |
| WANTAGE TOWNSHIP | 1 | SUSSEX | 1252 | 499 | 3.70% |
| BERKELEY HEIGHTS TOWNSHIP | 2 | UNION | 7542 | 2267 | 2.59% |
| CLARK | 2 | UNION | 8696 | 1103 | 0.97% |

| TOWNSHIP | | | | | |
|------------------------------|---|-------|-------|-------|-------|
| CRANFORD TOWNSHIP | 2 | UNION | 15920 | 3292 | 1.67% |
| ELIZABETH CITY | 2 | UNION | 58953 | 13539 | 1.88% |
| FANWOOD BOROUGH | 2 | UNION | 1757 | 140 | 0.59% |
| GARWOOD BOROUGH | 2 | UNION | 2386 | 114 | 0.35% |
| HILLSIDE TOWNSHIP | 2 | UNION | 7603 | 1534 | 1.62% |
| KENILWORTH BOROUGH | 2 | UNION | 12072 | 1465 | 0.93% |
| LINDEN CITY | 2 | UNION | 23211 | 3246 | 1.08% |
| MOUNTAINSIDE BOROUGH | 2 | UNION | 5922 | 232 | 0.29% |
| NEW PROVIDENCE BOROUGH | 2 | UNION | 9940 | 1845 | 1.48% |
| PLAINFIELD CITY | 2 | UNION | 11109 | 1302 | 0.89% |
| RAHWAY CITY | 2 | UNION | 15519 | 2327 | 1.17% |
| ROSELLE BOROUGH | 2 | UNION | 4416 | 539 | 0.93% |
| ROSELLE PARK BOROUGH | 2 | UNION | 2623 | 251 | 0.72% |
| SCOTCH PLAINS TOWNSHIP | 2 | UNION | 6476 | 655 | 0.76% |

40 N.J.R. 5965(a)

| SPRINGFIELD TOWNSHIP | 2 | UNION | 13246 | 2504 | 1.51% |
|--------------------------------|---|--------|-------|------|--------|
| SUMMIT CITY | 2 | UNION | 15729 | 1750 | 0.85% |
| UNION TOWNSHIP | 2 | UNION | 40799 | 8365 | 1.65% |
| WESTFIELD TOWN | 2 | UNION | 11632 | 642 | 0.41% |
| WINFIELD TOWNSHIP | 2 | UNION | 159 | 47 | 2.53% |
| ALLAMUCHY TOWNSHIP | 2 | WARREN | 408 | 52 | 0.98% |
| ALPHA BOROUGH | 2 | WARREN | 774 | 205 | 2.22% |
| BELVIDERE TOWN | 2 | WARREN | 1864 | -242 | -0.87% |
| BLAIRSTOWN TOWNSHIP | 2 | WARREN | 2348 | 597 | 2.12% |
| FRANKLIN TOWNSHIP | 2 | WARREN | 1819 | 898 | 4.98% |
| FRELING- HUYSEN TOWNSHIP | 2 | WARREN | 354 | 104 | 2.52% |
| GREENWICH TOWNSHIP | 2 | WARREN | 1123 | 378 | 2.97% |
| HACKETTS- TOWN TOWN | 2 | WARREN | 11213 | 1850 | 1.30% |
| HARDWICK TOWNSHIP | 2 | WARREN | 233 | 154 | 7.98% |
| HARMONY | 2 | WARREN | 238 | 4 | 0.12% |

| NEW JERSEY | | | 4480153 | 790465 | 1.40% |
|--------------------------|---|--------|---------|--------|--------|
| WHITE TOWNSHIP | 2 | WARREN | 770 | -44 | -0.40% |
| WASHINGTON TOWNSHIP | 2 | WARREN | 1679 | -163 | -0.66% |
| WASHINGTON BOROUGH | 2 | WARREN | 2471 | 210 | 0.64% |
| POHATCONG TOWNSHIP | 2 | WARREN | 2907 | 959 | 2.90% |
| PHILLIPSBURG TOWN | 2 | WARREN | 12652 | 3357 | 2.23% |
| OXFORD TOWNSHIP | 2 | WARREN | 489 | 127 | 2.17% |
| MANSFIELD TOWNSHIP | 2 | WARREN | 1359 | 286 | 1.70% |
| LOPATCONG TOWNSHIP | 2 | WARREN | 1081 | 37 | 0.25% |
| LIBERTY TOWNSHIP | 2 | WARREN | 647 | 92 | 1.10% |
| KNOWLTON TOWNSHIP | 2 | WARREN | 1017 | 193 | 1.51% |
| INDEPENDENCE TOWNSHIP | 2 | WARREN | 324 | -43 | -0.89% |
| HOPE TOWNSHIP | 2 | WARREN | 235 | -82 | -2.12% |
| TOWNSHIP | | | | | |

Source: Econsult Corporation (2008)

| NEW JERSEY COUNCIL ON AFFORDABLE HOUSING |
|--|
| TASK 2 ESTIMATING THE DEGREE TO WHICH FILTERING IS A |
| SECONDARY SOURCE OF AFFORDABLE HOUSING |

| (No | change.) |) |
|-----|----------|---|
|-----|----------|---|

Task 3 -- Compensatory Benefits to Developers for Provision of Affordable Housing:

Inclusionary Housing: Lessons from the National Experience

Addendum #1

Prepared by:

_

Click here for

image

Nicholas J. Brunick April 30, 2008

Submitted To: New Jersey Council on Affordable Housing (COAH) 101 South Broad Street Trenton, NJ 08625

[page=6169] Addendum #1 to the Report

In light of additional research and exploration of issues raised during the comment period, the following paragraphs are being submitted to correct and clarify the contents of the report as submitted in November.

The following paragraphs supplement or correct the information provided under III.A. in the sub-section on *Density Bonuses:*

The density bonus provided under the MPDU program in Montgomery County, Maryland runs from zero percent (0%) (if the development is only providing 12.5% affordable housing) to twenty-two percent (22%) (if the development is providing 15% affordable housing).

Some inclusionary housing programs do not require any of the "bonus units" to be affordable, such as Brentwood, Highland Park, Tallahassee, or the State of California's density bonus law. So, for example, under the State of California's density bonus law, if you include 10% affordable housing in a 100 unit subdivision, you will receive a 20% density bonus, which will allow you to build 20 additional market-rate units. As a result of the bonus, the developer receives approval to build a 120 unit subdivision where 10 of the units are affordable and 110 are market-rate.

However, many other programs--including but not limited to Cambridge, Massachusetts; Davis, California; Fairfax County, Virginia; Montgomery County, Maryland; Stamford, Connecticut; New York City, and the Chapter 40B program in Massachusetts--all require some percentage of the "bonus units" to be affordable. In Montgomery County, Maryland, the percentage of affordable housing required (12.5% to 15%) is calculated from the total number of units in the development. A subdivision development that would include 100 homes under the standard zoning requirements achieves no density bonus if it only includes 12.5% affordable housing (the baseline requirement under the ordinance). This results in a development with eight-seven (87) market-rate homes and thirteen (13) affordable homes (the affordable requirement is always rounded up). However, this same subdivision development can achieve a 22% density bonus if 15% of the total number of homes in the development are sold at the affordable price to eligible households. The result is a one hundred twenty-two (122) home subdivision where nineteen (19) homes are affordable and one hundred three (103) homes are market-rate. Instead of only eighty-seven market-rate homes (under the first scenario), the developer can build one hundred three (103) market-rate homes as a result of the density bonus by making 19 of the homes affordable instead of just 13. <1>

In New York City (where the inclusionary development receives a 33% density bonus, but 20% of the *total units* in the development must be affordable under the program); in Davis, California; and in Fairfax County, Virginia; the calculation of the affordable percentage also incorporates the density bonus units, thereby including them in the percentage required. In Stamford, anywhere from 1/5 to 1/4 of the density bonus units that are granted must be dedicated to affordable housing (in addition to the baseline 10% affordable requirement under the ordinance). Finally, under the 40B program in Massachusetts, the developer may receive an increase in density and other kinds of zoning relief, but 25% of the *total units* in the development must be affordable.

<1> It is important to note that according to the text of the current Montgomery County MPDU ordinance and according to Lisa Schwartz, Senior Planning Specialist for the Montgomery County Department of Housing and Community Affairs, the MPDU policy now requires that the affordable housing percentage be calculated off of the total number of units in the development (including any bonus units). However, in the past, for some developments, the percentage of affordable housing required was calculated off of the maximum number of units allowed under the existing zoning (e.g. 100 units), instead of from the total number of units in the final development (e.g. 122 units).

[page=6170] NEW JERSEY COUNCIL ON AFFORDABLE HOUSING TASK 3 - COMPENSATORY BENEFITS TO DEVELOPERS FOR PROVISION OF AFFORDABLE HOUSING

Final Report Submitted To: New Jersey Council on Affordable Housing 101 South Broad Street Trenton NJ 08625

Final Report Submitted By: Econsult Corporation 3600 Market Street 6th Floor Philadelphia PA 19104

FINAL - May 2, 2008

TABLE OF CONTENTS

Executive Summary

- 1.1 Court Findings
- 1.2 Basic Methods for Providing Affordable Housing
- 1.3 Do Incentives Work to Generate More Affordable Housing?
- 1.4 Compliance Issues Raised by the Court

2.0 Taxonomy of Development Incentives

- 2.1 Overview of Government Interventions
- 2.2 Easing Density and Density-Related Restrictions
- 2.3 Easing Non-Density Related Regulations or Requirements
- 2.4 Providing Direct or Indirect Fiscal Subsidies

3.0 The Effect of Offsetting Incentives

- 3.1 Basic Development /Investment Decision Making
- 3.2 The Economics of Incentives
- 3.3 Pro-Forma Approach
- 3.4 Illustrative Results
- 3.5 Lessons Learned

4.0 Recommendations for Regulatory Language

- 4.1 The Sufficiency of Incentives
- 4.2 Municipality Types
- 4.3 Non-Residential Construction

4.4 Payments in Lieu

Exhibit A--Pro Forma Results (High Land Cost Scenario)

Exhibit B--Price/Cost Index Methodology and Results

[page=6172] **EXECUTIVE SUMMARY**

In its review of New Jersey Council on Affordable Housing's (COAH) Third Round substantive and procedural rules and regulations, the Appellate Division of the Superior Court of New Jersey identified, among other challenges, issues related to the mechanisms municipalities have to work with towards fulfilling affordable housing requirements. Specifically, it determined that the ultimate responsibility for establishing a real estate environment conducive to meeting affordable housing needs rests with the municipality through its land use ordinances, and that therefore municipalities must offer development incentives sufficient to generate a realistic opportunity for developers to produce new affordable housing.

To the extent that the provision of affordable housing is deemed an appropriate public interest, **governments have a number of mechanisms at their disposal to actively encourage greater production within their jurisdictions.** <1> These tools include offering density bonuses, easing construction-related requirements, and/or providing financial subsidies.

Therefore, we can generate an illustrative pro forma statement to determine the effect on developer profitability of the affordable housing requirement, and then evaluate a variety of types and scales of compensatory benefits. Thus, we can solve for the various incentive amounts necessary to offset the cost of the affordable housing requirement, and can then compare that scale of incentives with levels that municipalities might choose to offer, **to determine if such levels can be considered as sufficient.**

Importantly, we assume that affordable units are allowed to differ in size from market units. According to an extensive literature and best practices review conducted by Applegate and Thorne-Thomsen, the most common sizing of affordable units is two units on the same footprint as one market unit, which would result in an approximate per-unit construction cost reduction of 40 percent.

From there, the incentive levels required to offset the affordable housing requirement depend on the set-aside ratio and on the affordability level of the affordable units: the more affordable units required, and the more deeply affordable they must be, the more offsetting incentives that are needed. For the purposes of this analysis, we use base assumptions of a 20 percent set-aside ratio (i.e. one affordable unit among five total units, or one for every four market units) and a price that is affordable to someone making 55 percent of median household income. These levels represent policy decisions at the state level, in terms of the amount of affordable units and depth of affordability that is being sought.

Based on these assumptions and scenarios, we can determine the scale of incentives required to compensate for the affordable housing requirement. For example, assuming a "one for one" density bonus, we find that a 4.5 percent construction cost reduction on all units is needed if all additional units are market units, or 7.0 to 7.8 percent if additional affordable units are built such that the original ratio of affordable units to market units is retained; alternatively, a straight density bonus would have to be in the neighborhood of 28 to 32 percent if all additional units are market units, and 39 to 49 percent if the set-aside ratio is retained (see Figure E.1).

Figure E.1--Illustrative Pro Forma Results: Incentive Levels Needed to Offset the Cost of Building One Affordable Unit for Every Four Market Units (Affordability Defined as Affordable to Someone Making 55 Percent of Median Household Income)

| ASSUMING 20% | HIGH LAND COST AREA (land = | | LOW LAND COST AREA (land = | | |
|-----------------------------|-----------------------------|----------------|----------------------------|----------------|--|
| SET-ASIDE | 37% of project costs) | | 26% of project costs) | | |
| RATIO | If all DB units | If set-aside | If all DB units | If set-aside | |
| | are market | ratio retained | are market | ratio retained | |
| 1. Density | | | | | |
| bonus % | 27.9% | 39.4% | 32.2% | 49.1% | |
| | | | | | |
| 2a. | | | | | |
| Construction | | | | | |
| cost reduction | | | | | |
| required | 19 | 9.3% | 1 | 4.3% | |
| | | | | | |
| 2b. | | | | | |
| Construction | | | | | |
| cost reduction, | | | | | |
| assuming 20% | | - 0 | | | |
| DB | 4.5% | 7.8% | 4.5% | 7.0% | |
| 2- ¢ 000 | | | | | |
| 3a. \$ 000 | | | | | |
| cash subsidy per affordable | | | | | |
| unit (ongoing, | | | | | |
| annual) | \$ | 73.5 | • | 5 54.9 | |
| amuar) | ψ | 73.3 | Ψ | , 54.9 | |
| 3b. \$ 000 | | | | | |
| cash subsidy | | | | | |
| per affordable | | | | | |
| unit (one-time, | | | | | |
| upfront) | \$: | 216.9 | \$ | 161.8 | |
| • / | · | | · | | |

Source: Econsult Corporation (2008)

The results from these scenarios inform our study in the following ways:

-- First, our illustrative examples calculate what is necessary to *completely offset the cost of the affordable housing requirement*; certainly, in the marketplace, there are situations in which an incentive does not need to completely offset

the cost of the affordable housing requirement for it to be effective in inducing developers to build.

- -- Second, these illustrative examples utilize very aggressive assumptions related to the provision of affordable housing: the set-aside ratio and the affordability level. These are policy choices that can be made, but it must be stated that requiring more affordable units and/or requiring that those units are more deeply affordable necessarily means higher levels of incentives are needed to offset the associated costs.
- -- Third, in fact many government entities that have instituted affordable housing requirements are located in *extremely attractive real estate markets*, and thus developers are often so motivated to build there that they are willing to bear the additional cost of the affordable housing requirement with zero incentives, density-related or otherwise.

[page=6173] -- Fourth, many affordable housing requirement programs encourage the *mixing of incentive types*. Thus, while density bonuses alone might require fairly high density increases, density bonuses in conjunction with construction cost reductions require more reasonable density increases. On a related note, for municipalities who are constrained in offering density bonuses by environmental regulations, state or regional planning mandates, or other restrictions, other offsetting incentives besides density bonuses will thus have to be considered and offered.

Of course, municipalities need not limit themselves to the minimum affordable housing requirements. A municipality might be motivated to go beyond minimum affordable housing requirements if COAH gives additional credit for doing so, and thus understanding the scale of incentives required to offset requirements at different set-aside ratios and affordability levels can provide some guidance on such trade-offs.

Importantly, the results above assume that land costs are **26 percent** of total project costs, which represents the lowest land to project cost ratio among the COAH regions. The higher land costs are as a percentage of total project costs, the lower the density bonus that is required, since the mechanism by which additional market units offset the cost of building affordable units is by allowing the developer to spread the project's fixed costs (i.e. land costs) over more units. Thus, higher fixed costs as a percentage of total project costs mean that there is a lot to be gained back by the developer in spreading out those higher fixed costs over additional market units.

Therefore, higher density bonuses are needed in lower-income areas, while lower density bonuses are needed in higher-income areas. This reconciles with national findings: in many cases, higher-income areas can institute affordable requirements with little or no offset density bonus, while lower-income areas often struggle to enable the construction of market units, and thus imposing an affordable requirement would require high levels of offsetting incentives to induce development.

Our illustrative scenarios thus use lower-income areas to determine what could be deemed a presumptive density increase that municipalities can offer to automatically obtain COAH certification. Certainly, though a higher-income area that offers a lower density increase would not receive automatic certification, its plan would likely be well received by COAH.

Non-residential construction also generates an affordable housing obligation, but housing units cannot always be included at the same site, and non-residential developers may not have the expertise or desire to build residential units. Non-residential developers have heretofore then paid a development fee instead of directly bearing the cost of building affordable units. If intended to completely pay for the cost of building affordable units, the development fee would be somewhere between 2.8 percent and 10.1 percent, based on building type (see Figure E.2).

Stadium Building Type Hospital Office Retail Factory Storage Theater Restaurant Library Arena K-12 Hotel mple#SF in Project 100.00 100,00 100.00 100.00 100,00 100,00 100,00 100,00 100,00 100,000 100,00 100,00 Average \$ Constr Cost/SF 112.5 94.8 84.8 159.4 151. 127.3 134.6 131.3 154.3 152.2 306.5 otal Sample Project Cost \$ 11,252,510 \$ 15,761,96 \$ 9,477,960 \$ 8,479,500 \$ 15,944,850 \$ 15,170,53 \$ 12,727,920 \$ 13,459,90 \$ 13,131,620 \$ 15,434,00 \$ 15,218,920 \$ 30,648,190 Approx. Project Cost/Market Value 509 504 1009 ssessed Value/Market Value 1009 1005 1004 100 1009 1009 1004 100 100 1005 1009 100 \$ 31,523,920 \$ 18,955,920 \$ 16,959,000 \$ 31,889,70 \$ 30,341.06 \$ 25,455,840 \$ 26,919,800 \$ 26,263,240 \$ 30,868,00 \$ 30,437,840 \$ 61,296,380 \$ 46,734,34 ample Project Assessed Value \$ 22,505,020 Task 4 Jobs/1000 Gross SF obs Created by Project 259. 111.7 146. 156. obs Per Affordable Unit 9.5 Affordable Units to be Built 16.2 9.1 7.0 8.4 9.0 9.2 18.3 9.2 19.6 14.3 9.8 14.7 135,735 2 135,735 2 135,735 135,735 Cost Per Affordable Unit \$ 135,735 2 135,733 2 135,735 135,735 135,735 135,73 135,735 Cost for All Affordable Units \$ 2,200,397 \$ 1,326,80 947,719 1,142,528 \$ 1,216,239 \$ 1,242,106 \$ 2,487,762 \$ 1,249,636 2.653.613 \$ 1,990,210 \$ 1,326,80 \$ 1,990,210 \$ 1,326,80 Cost as a % of Assessed Value 2.89

Figure E.2 - Cost of Affordable Housing as a Function of Non-Residential Construction

Click here for image

CONTEXT [page=6175] **1.0**

1.1 **Court Findings**

In its review of New Jersey Council on Affordable Housing's (COAH) Third Round substantive and procedural rules and regulations, the Appellate Division of the New Jersey identified three general groups of challenges to COAH's Third Round rules:

- Calculation issues,
- Allocation issues, and
- Compliance mechanisms.

Tasks 1, 2 and 4 of our work for COAH address various calculation and allocation issues discussed by the Court; in other words, they are concerned with estimating the total amount of affordable housing obligations, and its distribution across municipalities. Task 3, on the other hand, primarily deals with rulings on two specific issues in the third category, both related to the mechanisms municipalities have to work with towards fulfilling affordable housing requirements:

- The Court's decision to invalidate "the regulations that permit municipalities to provide affordable housing without offsetting benefits" to the developers,
- The Court's decision to invalidate the rules governing the "payment in lieu of" provision where municipalities negotiated with developers over the payment amount.

Throughout the Court's decision, and particularly applicable to the compliance mechanisms component of the regulations, is the determination that the ultimate responsibility for establishing a real estate environment

conducive to meeting affordable housing needs rests with the municipality through its land use ordinances.

Consequently, in its findings on the validity or invalidity of various "compliance mechanisms", the Court ordered that COAH develop new regulations that require municipalities to provide sufficient financial incentives or regulatory relief to developers to make sure the provision of affordable housing in the jurisdiction is economically viable:

Permitting municipalities to demand that developers build affordable housing without any additional incentives provides municipalities with an effective tool to exclude the poor by combining an affordable housing requirement with large-lot zoning and excessive demands for compensating fees in lieu of providing such housing. Under N.J.A.C. 5:94-4.4, municipalities need not consider the economic feasibility of complying with the ordinance. Yet, this is counter to the very definition of realistic opportunity adopted by COAH. Economics get factored into the equation only when the municipality exercises its right to require a developer to provide more than one affordable unit for every eight market-rate units or more than one unit for every twenty-five jobs. A regulatory regime that relies on developers to incur the uncompensated expense of providing affordable housing is unlikely to result in municipal zoning ordinances that make it realistically probable that the statewide need for affordable housing can be met. <2>

Thus, the Court stated that COAH is responsible for **reviewing proposed zoning plans to determine whether the plan creates a "realistic opportunity" for the construction of the municipality's fair share of affordable housing.**Furthermore, the Court explicitly requires that incentives be offered, and that blanket affordable housing requirements without sufficient economic incentives would violate the Mt. Laurel doctrine:

We conclude that the Mount Laurel doctrine, as articulated in *Mount Laurel II* and *Toll Bros.*, and as codified by the FHA, requires municipalities to provide incentives to developers to construct affordable housing. Land use ordinances requiring all developers to provide some affordable housing conflict with the essence of the Mount Laurel doctrine, which requires that municipal land use ordinances create a realistic opportunity.

Implicit in this language is the notion of **each municipality offering "sufficient" incentives--also known as compensatory benefits--to developers in order to compensate for additional costs imposed by the affordable housing requirements.** This is particularly important since the primary Round Three COAH "growth share" ties each municipality's affordable housing obligation to its expected future real estate development.

Such a mandate, requiring municipalities to provide incentives as necessary to achieve their fair share housing obligation, begs the question, "What constitutes 'sufficient'?" This will be the focus of much of this Task 3 report. However, if the Court calls for municipalities to provide incentives to developers in order to satisfy their fair share obligations, one must first ask an even more basic question: "Do incentives work in this case?" In other words, there is some question as to whether incentives would have any effect on the additional provision of affordable housing.

We will tackle that important question shortly. Assuming for a moment that incentives do in fact work, one must then determine how this court mandate gets translated into COAH's regulatory language. This is, as stated above, the primary objective of this report: to satisfy the requirements of the Mount Laurel decision, municipalities must offer sufficient incentives to create a realistic opportunity for affordable housing units to be built; and to properly certify participating municipalities, COAH must then determine what constitutes a "sufficient" set of incentives.

This report is structured to provide COAH with an understanding of sufficient incentives for the purposes of its ongoing substantive certification role, as well as with some guidance for its rulemaking. Specifically, we begin here in **Section 1** with the necessary legal and economic context from which we can more adequately cover the subject of incentives for affordable housing. **Section 2** provides an inventory of the wide range of public policy tools that municipalities have at their disposal to induce affordable housing provision. **Section 3** provides illustrative pro forma analyses to demonstrate to COAH the varying impacts of different incentives schemes. Finally, **Section 4** returns to the key questions at hand and summarizes the first three sections to the end of providing specific guidance on regulatory language that can fulfill

the Court's requirements.

1.2 Basic Methods for Providing Affordable Housing

It is important, when discussing incentives for providing affordable housing, to unpack the mechanics by which affordable housing is brought to the marketplace. It is important to note that, absent direct action, affordable housing can be and is in fact created on its own, through normal residential filtering, whereby previously unaffordable houses lose value over time until they become affordable, the previous owners having vacated the houses by trading up to more valuable ones. <3>

[page=6176] **Direct approaches to bringing affordable housing** to market include the rehabilitation of existing substandard housing stock, conversion of non-residential buildings into affordable housing units (for sale or rental), group homes or accessory senior apartments, and buy-downs of existing housing stock with conditions on future transfers. In addition, new construction can provide housing for low and moderate income households. This new construction can be provided in the following ways:

- -- By the developer on the same site as market rate units--this is known as "inclusionary housing," and the ratio of affordable units to market rate units is usually a pre-determined, "set-aside" proportion;
- -- By the developer (or another private developer) on a different development site from the market rate units but still in the same municipality;
- -- By the local government on a different development site from the market rate units but still within the municipality--this is done by utilizing the developer fees or "payments in lieu of" that are paid by the developer; or
- Outside of the municipality altogether--as determined by a Regional Contribution Agreement (RCA).

Here we briefly examine these basic methods, and comment on the types of incentives that could influence them. More detailed examination of various parts of these topics can be found in subsequent sections of this report.

Inclusionary Development Set-Asides

Housing "set-asides" are a fairly common method of encouraging or requiring affordable housing. Under set-aside programs, developers are required to build a portion of new or rehabilitated units that are affordable to people with low to moderate income levels. Developers can alternatively choose to pay a per-unit fee to relieve themselves of this obligation. In New Jersey, inclusionary developments are not charged developer fees.

To offer a couple of out-of-state examples, in Montgomery County, Maryland, between 12.5% and 15% of the houses in new subdivisions of 20 or more units must be moderately priced dwelling units (in accordance with the County's Moderately Priced Housing Law of 1974). This requirement has generated over 10,000 units of affordable for-sale and rental housing. <4>

The Department of Neighborhood Development in Boston requires rental housing developments with 10 or more units to include a minimum set-aside of 10% of the rental housing units for homeless families and/or individuals with an income no greater than 30% of the median income for the area. <5> Developers have the choice of setting aside units that meet this requirement, or paying a \$52,000 per unit fee into the trust fund.

Set-asides on these orders of magnitude have been part of the established procedure in New Jersey for many years. However, inclusionary development is still viewed in many communities as creating too much density, generating excessive infrastructure, and increasing local government costs.

Off-Site Provision within Municipality (by Private Developers): Using Payments in Lieu

A developer may provide the required affordable housing units at a different location than its market rate housing development, but still within the municipality. In this case, municipalities may charge payments in lieu of construction, the proceeds of which can then be used for the construction of affordable housing units elsewhere in the municipality.

The Court declared invalid COAH's practice of allowing municipalities to negotiate "payments in lieu of" amounts for not directly providing affordable units, noting that both municipalities and developers can have incentives to minimize the number of affordable housing units and therefore have a tendency to under-price these payment levels. COAH proceeded to modify its regulations regarding payments in lieu (N.J.A.C. 5:94-4.4) by developing three options for municipalities to create "standard guidelines" for pricing the payments in lieu:

- Cost based on site development
- -- Cost based on "Buy Down" program
- -- A hybrid of both approaches

Regional Contribution Agreements (RCA)

Regional Contribution Agreements (RCA) are, in a sense, inter-municipal "payment in lieu of" arrangements, whereby payments are made between municipalities, rather than within a municipality, such that affordable housing requirements in one municipality can be transferred to another municipality, in exchange for a payment.

1.3 Do Incentives Work to Generate More Affordable Housing?

Of significant and indeed seminal interest to this whole discussion is the basic question posed above: "Will incentives work?" That is, will the existence of incentives lead to the provision of more affordable housing units? Since the Court has ordered municipalities to provide necessary incentives in order to meet Mount Laurel fair share objectives, such a question is an important one to address.

Fundamentally, the introduction of inclusionary or other affordable housing requirements tends to impose a cost on development, because of the requirement to build a certain portion of housing units that will be unprofitable (i.e. construction and other costs will be higher than the sales price or the ongoing rental revenue). Such a requirement would require developers to cross-subsidize the affordable units with profits from the market rate units, thereby lowering overall profitability. If that inclusionary requirement is universal, the drag on profits will make the land upon which to develop less valuable, thus lowering demand for land, and hence land values for any locations where housing could be built. <6>

Lowering land values, as long as prices do not fall below those associated with the next-best use of the particular parcel, still allows the profitable production of affordable housing. In this scenario, all things being equal, developers can still make a profit, because the additional cost of building affordable units is somewhat or even totally offset by lower land acquisition costs. Meanwhile, those who need affordable housing, and the groups that advocate for them, win because the supply of affordable housing increases. Landowners, on the other hand, lose because they receive less from the sale of their land. <7>

In the reverse direction, the introduction of offsetting incentives, or compensatory benefits, tends to increase the **price of land** back to its original level prior to the affordable housing requirement, <8> because it makes developing on that land more profitable and thus increases its value. To the extent [page=6177] that the supply of developable land is

fixed (in economic terms, "inelastic," or alternatively, from the perspective of a typical supply and demand curve, a completely vertical supply curve), it can be argued that any incentive offered to developers will not in fact lead to new affordable housing development, but will instead be fully capitalized <9> into the price of the land, such that there is no net incentive to be gained by the developer. In such a scenario, only the landowner wins.

On the other hand, if the supply of developable land is not fixed (i.e. it is "elastic"), then incentives may indeed generate more production, and not result in as much or any price appreciation. This is because when the supply of developable land cannot change, the marketplace's only possible response to the increased attractiveness of the land is increased prices, as developers are now willing to pay more for the right to develop the land; but when the supply of developable land is not fixed, the marketplace can respond to the increased attractiveness of land by adding more land to the marketplace.

In fact, it is possible for land supply to go up or down, by converting farmland into developable space or by setting aside previously developable land as open space, to give but two examples. Thus, if the supply of developable land is not totally fixed, incentives will tend to increase land prices, but not so much as to completely offset the benefit of the incentive to the developer. As a result, incentives will work to induce provision of affordable housing. Empirically, we have seen that economic incentives in the real estate market have had demonstrable positive effects on production. <10> This suggests that land supply is not perfectly elastic, and that incentives are not fully capitalized into the price of land, which would render them completely ineffective, but in fact do change the development equation so as to induce more construction than would have otherwise occurred. <11>

In principle, basic supply and demand theory would argue that the net effect of the introduction first of an affordable housing requirement and then of offsetting incentives would be a price of land and a quantity of development that is the same as the status quo before these changes. Landowners would neither gain nor lose, and developers would be able to clear their originally intended profit levels.

1.4 Compliance Issues Raised by the Court

Overall, the Court, and most of those who have commented on its findings, emphasize one key point: **the responsibility to achieve fair share of affordable housing requirements rests with each municipality, and not with private developers or the State**. Further, a literal interpretation of the requirement would suggest that each municipality must offer "sufficient" incentives to produce its fair share of affordable housing.

Necessarily, then, COAH is seeking guidance in determining what constitutes a "sufficient" set of incentives. Unpacking this notion of "sufficiency" is the main objective of this report, and is the overarching topic of all of the following sections. These subsequent sections will also address some important sub-topics related to the overall topic:

- -- Is there such a thing as a presumptive level of incentives that can be considered sufficient, and if so, what is that level? <12>
- -- Should incentive levels differ across COAH regions?
- -- Should incentive levels differ between sales and rentals?
- -- Should incentive levels differ between new construction and rehabilitation?
- -- How should COAH deal with affordable housing requirements generated by increases in employment resulting from new non-residential construction?
- -- How should COAH deal with calls to expand the base of affordable housing to account for even lower-income

households (also known as "affordability deepening")?

-- How should COAH reconfigure its "payments in lieu of" regulations?

All of these sub-topics will be addressed indirectly in Sections 2 and 3. They will then be directly discussed in Section 4, as we summarize our findings from Sections 1, 2, and 3, and provide guidance to COAH on regulatory language moving forward.

2.0 TAXONOMY OF DEVELOPMENT INCENTIVES

2.1 Overview of Government Interventions

To the extent that the provision of affordable housing is deemed an appropriate public interest, **city, county, and state governments have a number of mechanisms at their disposal to actively encourage greater production within their jurisdictions.** These tools include incentives for both new construction and the substantial rehabilitation of existing structures.

We begin this section by discussing these mechanisms as a unit, from a theoretical standpoint. Then we describe some specific sets of tools and their various manifestations. In parallel, an extensive literature and best practices review was conducted by Applegate and Thorne-Thomsen to inventory these various mechanisms, and to highlight their use and effectiveness around the country. The Applegate and Thorne-Thomsen report has been delivered in conjunction with this study, and is largely in agreement with our findings and recommendations here.

Underlying such public policy actions are two important economic assumptions. First, the use of subsidies acknowledges that **an insufficient amount of provision would take place in the free market**, and that incentives are needed to induce new private investment or reinvestment. Second, as stated before, it must be true that the introduction of incentives will actually have such an effect, rather than simply driving up the market price of developable land.

It is important to note that **affordable housing regulations at the local level are fundamentally different from statewide efforts**. The main problem concerning affordable housing in New Jersey, as identified by the original Mount Laurel decision by the Supreme Court of New Jersey, is the variation across, not within, jurisdictions. Most affordable housing incentive programs identified during our national literature review were, in contrast, initiated at the local level, whereby municipalities sought to remedy the variation within their jurisdictions.

The "fair-share housing requirement" can be viewed as a tax or an additional cost on real estate development in any jurisdiction, all else equal. The ability of a developer to bear this additional cost burden is a function of many variables, but it is clear that, all else equal, the affordable housing inclusion requirement itself will discourage investment and result in fewer housing units produced. <13>

[page=6178] As a result, many municipalities look to offer offsetting incentives, or compensatory benefits, to developers, to counteract the effect of the affordable housing obligation. Broadly, these incentives fall into three categories:

- 1. Easing density and density-related restrictions;
- 2. Easing non-density-related regulations or requirements; and/or
- 3. Providing direct or indirect fiscal subsidies.

The first category of incentives allows more units to be built than would be otherwise, offsetting the reduced profit

margins by enabling higher sales volumes. The second typically reduces the production cost of whatever is being built, restoring previous profit margins for developers. The third can influence either sales numbers (demand side) or production costs (supply side).

These three avenues are not mutually exclusive, and some combination of approaches can be and are utilized in New Jersey and throughout the country. While different municipalities use different types of development incentives based on unique characteristics and regional preferences, density-related incentives appear to be the most common.

Mechanically, these incentives are made available to developers via land use regulations such as zoning. This is important to note, because the underlying basis for the Mount Laurel court decision and the policy action that has resulted from it (including the creation of COAH itself) was and remains the effects of exclusionary zoning on the distribution of low- and moderate-income households in the state.

2.2 Easing Density and Density-Related Restrictions

Density-related zoning and regulations are the primary means of controlling land use in the US. In virtually all cases, density restrictions place limits on the ability of owners and developers to use their private property however they see fit. These restrictions tend to reduce the value of the land, but that reduction is offset by a greater, public purpose. <14>

Local jurisdictions have long known that restricting land use alternatives can keep property values high by artificially reducing the supply of land for new residential development (monopoly power), by increasing the quality of the land by keeping out uses and users that are perceived as less attractive, and by minimizing the cost of providing public services such as education. Combined, these efforts take the form of exclusionary zoning, and the New Jersey Fair Housing Act is a court-mandated response that offers an antidote to exclusionary zoning and its success at keeping affordable housing out of certain jurisdictions.

For any given level of restrictive land use zoning, there are a number of ways a local jurisdiction may ease those restrictions, thereby adding value to certain land assets. These include a variety of incentives that are generically referred to as a "**density bonus**," defined as:

The density bonus is a land use incentive that allows the developer to construct more units than would otherwise be allowed in a specified residential zone in exchange for the provision of affordable housing units. The assumption is that with additional units the developer is able to achieve a higher profit level on the housing development. When density is increased, the fixed costs per unit are generally lower, since the land prices, soft costs, and foundation costs can be amortized over more units.

A density bonus could be used as an incentive for increasing the production of affordable housing units. Various restrictions may apply, such as the income level at which the units must be affordable, the time period when the "bonus" units must be developed, and design standards requiring affordable units to appear similar to the market-rate units. <15>

A density bonus can take various forms, of which the first in this list is most common:

-- Increased number of units per acre

This means that for every affordable unit that a developer promises to build, he or she can build a calculated number of market rate units greater than would be allowed otherwise in the current zoning designation.

-- Reduced minimum building separation requirements

Eligible projects can construct buildings closer together than would normally be allowed, to allow for more units to be built.

-- Increased Floor Area Ratio (FAR)

The FAR refers to the total building square footage (building area) divided by the site size square footage (site area). Municipalities can increase the ratio to allow the developer more flexibility in their building design.

-- Increased maximum lot coverage ratios

Lot coverage refers to the percentage of a lot occupied by structures (buildings and driveways). Increasing the maximum lot ratio increases the land area that can be developed.

-- Relaxed setback requirements

The setback line usually refers to the distance from the public right of way line along a street, alley, sidewalk, etc. or the distance from the rear or side property line. Reducing the setback therefore increases the availability of land for development.

-- Increased building height or mass allowances

Increasing building height or mass allowances allow for more flexibility for developers in their building design, and also allow for additional and/or larger units to be built.

-- Reduced minimum unit size

Reducing unit size and lot coverage requirements allows developers to build smaller and more affordable units, relative to market rate units, by reducing construction and land costs. Many programs allow unit size reduction while establishing minimum sizes.

[page=6179] In the first of these incentives, a municipality allows a certain percentage more units to be built in exchange for a certain percentage of affordable units. If a developer is required to have 10% of a project's units be affordable, and is allowed to build 10% more total units as a result, that is considered a "1 to 1" density bonus. Chicago, Cambridge, and Stamford are three cities that offer such an offsetting incentive.

The other incentives are a form of zoning flexibility, whereby other means of "boxing in" a development are relaxed or removed altogether, thus achieving the same results as the straight density bonus. San Diego CA, Madison WI, and Tallahassee FL are three cities that offer such zoning flexibility.

The key here is that easing density restrictions is, for most municipalities, the most direct and effective incentive to creating a more attractive real estate investment environment. These restrictions act as a deterrent to investors, and simply by allowing greater flexibility and/or increasing the amount that can be built, the land can be made more attractive to real estate investors, as will be borne out in the pro forma analysis below. <16>

2.3 Easing Non-Density-Related Regulations or Requirements

Local governments also regulate housing development by imposing restrictions or additional requirements on new supply or rehabilitated housing stock. Essentially, each of these restrictions increases the production cost of housing (whether new or rehabilitation)

-- Relaxed design and development standards

These allow the developer increased flexibility and lower costs. They include reducing landscaping requirements or including fewer amenities for the affordable houses (compared with market-priced housing).

-- Expedited review and permit processing

This involves streamlining the process for development in order to reduce developers' carrying costs. These can include any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

-- Impact fee deferrals or waivers

Impact fees are fees that are imposed on new constructions to pay for the expansion of new services and infrastructure, such as fire stations, police stations, sewer and water supply systems, parks, and libraries. Waving or deferring these fees can result in significant savings for developers.

-- Building fee deferrals or waivers

Building fees are for new construction, additions, alterations and repairs, and are based on the constructed area. Local governments can waive all or part of the fees for qualifying projects.

-- Relaxed parking requirements

Reducing the requirements for parking spaces per unit reduces overall costs and increases land efficiency and housing units per site. Measures can include reducing the minimum number or size of spaces, and allowing underground, structured, or tandem parking. Parking requirements can be controlled by linking to the number of bedrooms per unit (For example, 1.35 spaces for one-bedrooms, and 1.5 spaces for 2 bedrooms).

-- Reduced building standards

To relieve costly requirements that do not compromise safety, developers of affordable housing developments can be allowed significant flexibility in building standards. This allows for alternative quality levels in the development.

-- Alternative housing types

These can include rental apartments and condominiums, townhouses, townhouse/duplex units embedded in the bases of larger buildings, studios, and live-work units (accommodation that is specifically designed to enable both residential and business use). A mixture of types accommodates various household sizes and configurations, a range of income levels, and diversity of residents.

-- Street Right-of-Way Reduction

To reduce the costs of development (and to increase the available area for housing units), the minimum width of streets and drainage infrastructure can be decreased.

What all of these incentives have in common is that they lower the cost of development for the developer, thus offsetting the cost of building affordable units. Many incentive programs do not allow actions that allow for a lower-quality product to be built, claiming that it defeats the purpose of an inclusionary housing policy. Nevertheless, a number of cities take this approach in making affordable housing work for developers, including Santa Monica CA

(parking reductions), Chicago IL (reduced interior finishes), and Chapel Hill NC (expedited review process).

2.4 Providing Direct or Indirect Fiscal Subsidies

A third way that local jurisdictions can encourage certain types of development is via **direct or indirect fiscal subsidies**. In other words, rather than allowing the developer to build more units (and thus generate more revenue) or avoid some requirements (and thus lower their costs), governments can offset the cost of building affordable housing units by simply reimbursing the cost, through a variety of mechanisms:

-- Selected Tax Abatement

The abatement refers to a reduction or an exemption of local tax (typically property tax) usually for a certain number of years and is based on the number of low-income units. This means that developers who develop in eligible distressed areas can receive property tax abatement, providing significant savings.

-- Tax Increment Financing (TIF)

[page=6180] TIF is a tool to use future gains in taxes to finance the current improvements that will create those gains. Bonds are issued to pay for planned improvements, which in turn encourage private development. Private development raises site value and creates more taxable property, which increases tax revenues (the "tax increment"). This increased revenue is then used to finance the debt issued. TIF is designed to channel funding toward improvements in distressed or underdeveloped areas where development would not otherwise occur.

-- Utility hook up or other impact cost grants

Grants that support post-construction infrastructure needs can be made available to developers for completed affordable housing developments. Utility hook-up fees can run into several thousand dollars per unit, and therefore the grants can have a significant impact on the viability of a project.

-- Subsidized development loans

Below-market loans can be made available to the developer to lower the purchase price of a unit or the rent, ensuring affordable housing.

-- Construction or permanent financing loan guarantees

Loan guarantees, including HUD Section 108, can be provided to developers as a source of financing for affordable housing projects in eligible communities.

-- Contributions of land or land price write downs for public land

This involves the contribution of land to an affordable housing project, or the sale of land at a below-market price to developers of an affordable housing project.

-- Grants/loans for site assembly, demolition or other site preparation costs

Often federal grants administered by the city, these provide funds for the pre-construction costs associated with a development and are open to developers who plan to construct affordable housing and meet the specific requirements.

-- Credit enhancement for development financing

In exchange for setting aside affordable units within the project, local governments can provide credit enhancements to reduce financing costs for developers.

-- Tax Increment Set-Aside (TISA) programs

TIF set-asides for affordable housing are a method of ensuring funding for affordable housing. These programs require local municipalities to spend a minimum percentage of their total tax increment revenue on affordable housing in TIF districts or areas designated as redevelopment areas. Cities such as Portland, Oregon, and Madison, Wisconsin, as well as the State of California, have adopted TIF set-asides to varying degrees. Each area also has differing guidelines on how the funds should be spent.

Since 1976, California law has required that a minimum of 20% of the redevelopment tax increment must be set-aside for "increasing, improving, and preserving the community's supply of low and moderate-income housing". <17> Almost \$ 100,000,000 in TISA funds was expended in the Bay Area alone during FY 1996-97. <18>

The City of Madison requires a set-aside for the development of affordable housing of 10% of the estimated district-wide increment in TIF districts with residential areas. Madison's guidelines for the TIF set-asides include confirmation that if not for the TIF funds the project would not occur; a \$ 25,000 maximum per-unit subsidy in rehab assistance or \$ 45,000 for development of new units (with an additional \$ 5,000 per unit available when necessary for projects to provide for energy conservation or lead paint hazard reduction efforts etc.); and a minimum requirement of 85% of TIF funds to be used for hard costs, such as construction costs, soils/site preparation, landscaping, etc. All TIF set-aside funds must be also be expended within 7 years of the creation of the TIF district. <19>

Portland requires spending of up to 30% of total TIF resources for affordable housing. Portland's Development Commission has also adopted guidelines to ensure that the focus of the TIF set-aside is on implementing two primary City priorities: affordable homeownership in support of families and bridging the minority homeownership gap (Operation HOME), and low-income rental housing for extremely low-income households and formerly homeless individuals and families (the 10-Year Plan to End Homelessness). <20>

Interestingly, there are a number of cases in which municipalities provide no cost offset to go along with their affordable housing requirement, but do step up with funds if a developer is willing to go beyond those minimum requirements and build additional affordable units. Boulder CO, Carlsbad CA, and Newton MA are three cities that take this approach.

3.0 ILLUSTRATIVE DEVELOPMENT PRO FORMAS

3.1 Basic Development /Investment Decision Making

The key component of the Appellate Division of the Superior Court of New Jersey's recent findings--that municipalities must offer development incentives sufficient to generate a realistic opportunity for developers to produce new affordable housing--potentially expands the role and nature of the New Jersey Council on Affordable Housing's (COAH) review process of plans submitted for substantive certification. To some extent, it may **require COAH to either develop a presumptive level of incentives, and/or determine through its regulations whether a municipality's plan of incentives to developers is sufficient to induce affordable housing provision (either be inclusionary or off-site) or at least sufficient to create a "realistic opportunity" for affordable housing to be developed.**

Both such tasks are complicated by the **wide variation in local markets** across the state. In other words, a presumptive level of incentives and/or the sufficiency of a particular package of compensatory benefits might be best judged on a case-by-case basis. Their sufficiency, after all, is dependent on such changing variables as the national and regional real

estate market over time, the relative attractiveness and risk of a location compared to other locations, and the existing densities and related regulations for one municipality versus that of another. This must be balanced against the benefit of predictability and certainty that comes with established thresholds.

[page=6181] Thus, it may be impossible to pre-produce pro forma statements that are encompassing of all permutations or that are extremely accurate. Nevertheless, it is possible to pre-produce some illustrative pro forma statements, which can be used to derive some general principles that are applicable to the notion of "sufficiency," and that can also be used to address some of the important sub-topics that were introduced in Section 1.

3.2 The Economics of Incentives

Our analysis in this section, then, can be used by COAH as a benchmark against which municipal plans can be compared, since these illustrative pro forma statements provide some sense of the impact of various incentives on developer returns. Before we can even set up benchmark assumptions, though, we must revisit a couple of theoretical issues that have been introduced previously and that can now be discussed in the context of these illustrative pro forma statements.

Elasticity of Land Supply

As mentioned earlier, the introduction of an affordable housing requirement would tend to lower the cost of land, while the introduction of offsetting incentives would tend to increase the cost of land. These increases and decreases in land acquisition costs would have a direct effect on a developer's estimated profit.

If the status quo has already capitalized the affordable housing requirement into land prices, but it has not yet capitalized the existence of incentives, it is possible that, if land supply is completely inelastic and markets are perfect, the value of the incentive, rather than restoring the developer's original return to the level prior to the affordable housing requirement, will simply lead to the exact increase in land acquisition cost that offsets the incentive. Under such a scenario, no amount of incentives, no matter how great, restores the developer's original return, and therefore no amount of incentives will induce additional provision of affordable housing units.

However, empirically we note that incentives do in fact work to induce development. Nevertheless, while their value may not be fully capitalized into land prices, it is equally true that **their value is at least somewhat capitalized into land prices**. One might preliminarily calculate what scale of incentives would be required to offset the cost of the affordable housing requirement, but that scale of incentives might not actually achieve the desired level of affordable housing units, because the introduction of that scale of incentives would increase the land acquisition cost, thus changing the numbers in the pro forma statement.

Discarding equally the possibility that incentives are completely capitalized into land prices and the possibility that they are not at all capitalized into land prices, let us temporarily assume that incentives are exactly 50 percent capitalized into land prices. This is the equivalent of saying that rather than whatever level of incentives one might initially calculate to be needed to offset the cost of the affordable housing requirement, the actual level of incentives needs to be double that, to account for the effect on land acquisition costs of the introduction of the incentives.

In reality, it is not clear what percentage of the value of incentives is actually capitalized into land prices. Affordable housing requirements may result in reduced land prices, which in turn reduces the need for incentives; while offsetting incentives may result in increased land prices, which in turn shrinks the impact of those incentives.

Presumptive Density

As will be detailed below, the goal of the upcoming illustrative development pro forma statements is to calculate the

amount of incentives needed to offset the cost of the affordable housing requirement. Many of the incentive types are some form of density bonus; in such cases, the pro forma model can estimate the amount density has to increase to restore a developer's profits to their levels before the introduction of the affordable housing requirement.

What the proforma model does not focus on is the inherent profitability of a project. Thus, the question of whether a certain density level that is being offered can be deemed sufficient for inducing construction can only be determined if the starting density is known.

Nevertheless, regardless of the original density, is there a notion of "presumptive density"? In other words, is there a density that is innately sufficient to induce affordable housing, regardless of what the current density levels are? Again, the pro forma model, in its current form, cannot answer such a question.

However, intuitively, we can conjecture over whether there exists such a density level. Real estate markets are efficient enough that if a location's zoning allows a relatively high density, and demand to live at that location is high enough that all the allowable units will be sold for a profit, then the price of the land may go up accordingly, such that there is no "extra margin" enjoyed by the developer that would thus enable him to accept losing money by building affordable units.

On the other hand, we know that many parts of the country have successfully integrated affordable housing requirements without prohibitively slowing development. These locations are characterized by high demand and/or natural supply limits (most notably, coastlines), such that there is such a premium to build that developers are willing to "pay the cost" of affordable units for the right to build there. In theory, a dense enough zoning could create such a dynamic, and to the extent that the increased value of the location is not totally captured by higher land prices, there could be sufficient incentive to developers from the density by itself to induce construction even in light of affordable housing requirements.

3.3 Pro Forma Model - Approach

Our goal in generating and annotating an illustrative pro forms statement is to determine the effect on developer profitability of first the affordable housing requirement, and then of a variety of types and scales of compensatory benefits. Specifically, we have constructed a pro forms statement that consists of three sheets:

- 1. The initial pro forma statement, prior to affordable housing requirement and affordable housing incentives;
- 2. The pro forma statement, after the affordable housing requirement has been accounted for but prior to the introduction of the affordable housing incentives; and
- 3. The pro forma statement, after both the affordable housing requirement and the affordable housing incentives have been accounted for.

[page=6182] By solving for the various incentive amounts necessary to offset the cost of the affordable housing requirement, we can then compare that scale of incentives with levels that municipalities might choose to offer, to determine if such levels can be considered as sufficient. Specifically, we can calculate the estimated density bonus or construction cost reduction needed, among other incentive packages.

It is important to note that **these are merely illustrative examples, intended to provide general guidance on development activities that span a wide diversity of inputs and results**, with variations according to geography, market conditions, and other variables. Initial assumptions have been chosen to represent reasonable inputs, but certainly individual cases will have their own characteristics.

While we have built out the model so as to allow for a variety of assumptions, we will initially walk through a base scenario involving a development of 100 houses for sale. <21> We then loaded in reasonable estimates for various revenue and expenditure assumptions. <22>

It is important to note that we load in initial assumptions of land acquisition and demolition at approximately 26 percent of total project costs (which represents the lowest land to project cost ratio among the COAH regions), <23> and infrastructure costs at approximately 5 percent of total project costs. <24> These proportions for acquisition, demolition, and infrastructure are important because a density bonus offsets an affordable housing requirement to the extent that such project costs can be held as fixed while more units are added, thus lowering the cost per unit and thus enabling a developer to incur additional costs while retaining a desired profitability level. <25>

We then set house prices such that the internal rate of return on the initial investment is around 50 percent and the net income of the project is around 10 percent. <26> Based on our initial assumptions, this requires a sale price of \$477,120, a price level at which the internal rate of return is exactly 50 percent and the overall net income for the project is 9.3 percent (see Figure 3.1).

With the introduction of an affordable housing requirement, a certain number of affordable units will have to be built, depending on the set-aside ratio. Let us preliminarily assume that the set-aside ratio is 20 percent--i.e. affordable units represent 20 percent of all units, or, put another way, there must be one affordable unit for every four market units. Thus, instead of 100 market units selling for \$ 477,120, the development now (temporarily) consists of 80 market units selling for \$ 477,120 and 20 affordable units selling for much less. Based on COAH's current payment in lieu calculations and assuming a mix of homebuyers that consists of half who are at 40 percent of median income and half who are at 70 percent of median income, we have determined that the affordable price is \$ 89,265. <27>

We can now see the impact of the affordable requirement on the developer's bottom line. Not surprisingly, the replacement of 20 market units with 20 affordable units that sell for significantly less than the market units as well as significantly less than the cost to construct them leads to a significant drop in profitability: a negative internal rate of return, and an overall net loss for the project of 7.8 percent (see Figure 3.2). <28>

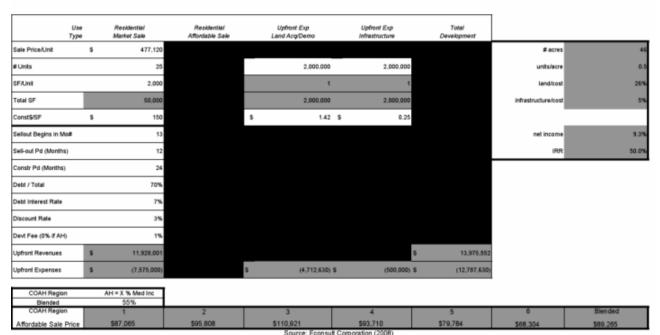


Figure 3.1 - Illustrative Pro Forma, Step 1: Prior to Affordable Housing Requirement and Affordable Housing Incentives

Click here for image

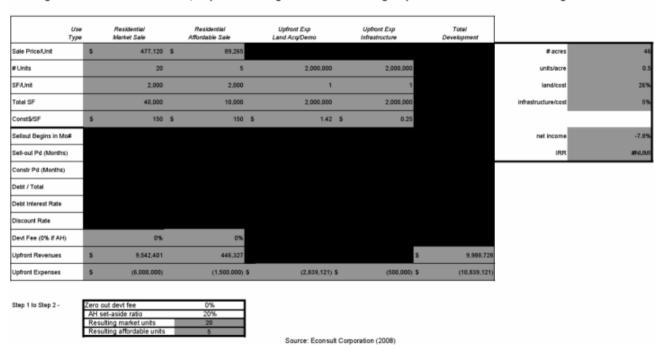


Figure 3.2 – Illustrative Pro Forma, Step 2: Accounting for Affordable Housing Requirement But Not Yet for Offsetting Incentives

Click here for image

[page=6185] **3.4** Illustrative Results

Now we can introduce compensatory incentives, and specifically we can determine the scale of incentives that are needed to offset the effect of the introduction of the affordable housing requirement. In other words, we can calculate the amount of incentives that would have to be added in our illustrative example for the internal rate of return to 50 percent.

Importantly, we make one key assumption prior to this calculation. Previously, we had not assumed that there would be any difference between the market units and the affordable units. In reality, affordable units almost always differ from market units, if not in the quality of the materials allowed to be used (thus leading to a reduction in the construction cost per square foot) then in the size of the structures (thus leading to a reduction in the square foot per unit). In fact, according to the extensive literature and best practices review conducted by Applegate and Thorne-Thomsen, the most common sizing of affordable units is two units on the same footprint as one market unit (see Figure 3.3).

Figure 3.3--Illustrative Sizing of Affordable Units vs. Market Units (Fairfax County, Virginia)

(L) Two Affordable Town Homes, (R) One Market-Rate Single-Family Home



Click here for image Source: Applegate and Thorne-Thomsen (2007)

Based on this scale of sizing, affordable units would be substantially less costly to produce than market units. The cost would not be cut in half, because there are certain fixed costs per unit, such as kitchens and heating/cooling systems, that do not decrease even given much smaller footprints. We estimate that the cost savings per unit is on the order of 40 percent, assuming that footprints are cut exactly in half and that fixed costs represent 20 percent of the cost of constructing a house (see Figure 3.4).

Figure 3.4--Illustrative Cost Savings on Affordable Units if Built at Two Units Per Lot vs, One Unit Per Lot

| | # units/ lot | SF / unit | fixed cost per unit | variable cost per SF | total cost for lot | total cost/unit |
|--------------------------|-----------------|-----------|---------------------------|----------------------------|--------------------------|--------------------|
| market | 1 | 2000 | \$ 60,000 | \$ 120 | \$ 300,000 | \$ 300,000 |
| affordable | 2 | 1000 | \$ 60,000 | \$ 120 | \$ 360,000 | \$ 180,000 |
| cost savings per unit | | | | | | 40% |

Source: Econsult Corporation (2007)

The Applegate and Thorne-Thomsen report affirms the primacy of density bonuses as the incentive type of choice for municipalities, although it also finds that most programs offer more than one incentive type to induce the construction of affordable housing. Accordingly, we solve for multiple incentive packages, to offer guidance on the various ways municipalities can offer offsetting incentives:

- -- What is the density bonus needed to offset the affordable housing requirement? In other words, how many more units do municipalities need to allow developers to build to offset the cost of building affordable units and selling them below cost?
- -- What is the construction cost reduction needed to offset the affordable housing requirement? In other words, how much do municipalities have to relax construction-related requirements (parking minimums, mandated materials, et al)?
- -- What is the *construction cost reduction* needed to offset the affordable housing requirement, given a "one for one" density bonus? In other words, after offering a 20 percent density bonus <29> how much additional incentives in the form of construction cost reductions must be offered?
- -- What is the upfront or ongoing cash subsidy needed to offset the affordable housing requirement? In other words, how much to municipalities have to give back to developers upfront (for example, in the form of infrastructure investments) or ongoing (for example, in the form of tax credits)?

[page=6186] Based on these assumptions and scenarios, we can determine the scale of incentives required to compensate for the affordable housing requirement. For example, assuming a "one for one" density bonus, we find that a 4.5 percent construction cost reduction on all units is needed if all additional units are market units, or 7.0 to 7.8 percent if additional affordable units are built such that the original ratio of affordable units to market units is retained. Alternatively, a straight density bonus would have to be in the neighborhood of 28 to 32 percent if all additional units are market units, and 39 to 49 percent if the set-aside ratio is retained (see Figure 3.5 and Figure 3.6). <30>

Figure 3.5--Illustrative Pro Forma Results: Incentive Levels Needed to Offset the Cost of Building One Affordable Unit for Every Four Market Units (Affordability Defined as Affordable to Someone Making 55 Percent of Median Household Income)

| ASSUMING 20% | HIGH LAND COST AREA (land = | | LOW LAND COS' | LOW LAND COST AREA (land = | | |
|----------------|-----------------------------|----------------|---------------------|----------------------------|--|--|
| SET-ASIDE | 37% of project cost | ts) | 26% of project cost | rs) | | |
| RATIO | If all DB units | If set-aside | If all DB units | If set-aside | | |
| | are market | ratio retained | are market | ratio retained | | |
| 1. Density | | | | | | |
| bonus % | 27.9% | 39.4% | 32.2% | 49.1% | | |
| | | | | | | |
| 2a. | | | | | | |
| Construction | | | | | | |
| cost reduction | | | | | | |
| required | | 19.3% | | 14.3% | | |
| | | | | | | |

2b.

Construction cost reduction, assuming 20%

DB 4.5% 7.8% 4.5% 7.0%

3a. \$ 000 cash subsidy per affordable unit (ongoing,

annual) \$ 73.5 \$ 54.9

3b. \$ 000
cash subsidy
per affordable
unit (one-time,

upfront) \$ 216.9 \$ 161.8

Source: Econsult Corporation (2008)

AH Cost Reduction

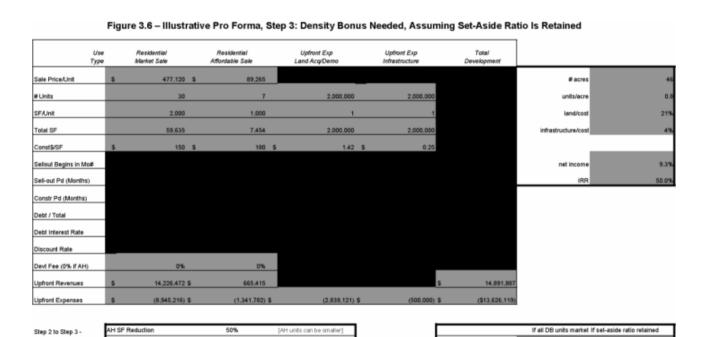
B Units all Market?

ensity Bonus

40%

49%

[Cost reduc < SF reduc]



nsult Corporation (2008)

inal market units

inal affordable units

Click here for image

[page=6188] 3.5 Lessons Learned

National and Local Context

It is important to remember that the results above are derived from an illustrative pro-forma analysis. Individual municipalities, and individual projects within them, may in fact have very different revenue and expense estimates associated with them. Furthermore, at a statewide level, policy decisions such as the setting of the set-aside ratio and the affordability level will play a role in the incentive levels needed to offset the affordable requirement: the higher the set-aside ratio and/or the deeper the affordability, the more incentives that will be needed.

In placing these incentive levels within a broader, national context, it is important to keep the following considerations in mind:

- -- First, our illustrative examples calculate what is necessary to *completely offset the cost of the affordable housing requirement*; certainly, in the marketplace, there are situations in which an incentive does not need to completely offset the cost of the affordable housing requirement for it to be effective in inducing developers to build. Developers may, for example, choose to accept lower margins, and/or find ways to reduce construction costs on their own or through their sub-contractors such that the cost of the affordable requirement is absorbed without adversely affecting profitability. The marketplace may also provide a boost, as noted before, in that the existence of an affordable housing requirement may cause land prices to fall, helping the numbers work for developers.
- -- Second, these illustrative examples utilize two very aggressive assumptions related to the provision of affordable housing. For one, providing one affordable unit for every four market units that are built is a very high proportion of affordable units. Furthermore, making affordable units such that someone at 55 percent of median income can afford them is a very deep level of affordability. These are policy choices that can be made, but it must be stated that *requiring more affordable units and/or requiring that those units are more deeply affordable necessarily means higher levels of incentives are needed to offset the associated costs.*
- -- Third, in fact many government entities that have instituted affordable housing requirements are located in *extremely attractive real estate markets*, and thus developers are often so motivated to build there that they are willing to bear the additional cost of the affordable housing requirement with zero incentives, density-related or otherwise. In such cases, not only do incentives not need to fully offset the additional cost of the affordable housing requirement, they do not need to be offered at all.
- -- Fourth, many affordable housing requirement programs encourage the *mixing of incentive types*. Thus, while density bonuses alone might require fairly high density increases, density bonuses in conjunction with construction cost reductions require more reasonable density increases. On a related note, for municipalities who are constrained in offering density bonuses by environmental regulations, state or regional planning mandates, or other restrictions, other offsetting incentives besides density bonuses will thus have to be considered and offered.

Of course, municipalities need not limit themselves to the minimum affordable housing requirements. For example, a municipality could offer a certain level of density bonus or construction cost reduction to offset the cost of the affordable housing requirement, and in parallel offer a deeper level of density bonus or construction cost reduction in exchange for more affordable units than are required, or alternatively for the required number of units sold at a more affordable price, either of which might earn them additional credit towards their affordable housing requirement. A municipality might be motivated to go beyond minimum affordable housing requirements if COAH gives additional credit for doing so, and thus understanding the scale of incentives required to offset requirements at different set-aside

ratios and affordability levels provides some guidance to such trade-offs.

Variation Across Municipalities

Importantly, the results above assume that land costs represent 26 percent of total project costs, which represents the lowest land to project cost ratio among the COAH regions. The higher land costs are as a percentage of total project costs, the lower the density bonus that is required, since the mechanism by which additional market units offset the cost of building affordable units is by allowing the developer to spread the project's fixed costs (i.e. land costs) over more units. Thus, higher fixed costs as a percentage of total project costs mean that there is a lot to be gained back by the developer in spreading out those higher fixed costs over additional market units. Conversely, if fixed costs are a relatively small percentage of total project costs, the developer does not gain much back by adding additional market units.

In fact, while land costs tend to adjust in response to the attractiveness of the land (in terms of what prices the market is willing to pay for such a location), construction costs are far more homogenous across real estate markets. Consider, for example, our base case as compared to developments in two other municipalities, one that is very low-income and one that is very high-income. <31> In a municipality that is very low-income, land costs will be far lower, while total project costs will not move as drastically, to the extent that construction costs are relatively equal. The opposite is true in a municipality that is very high-income: land costs will be far higher, while total project costs will not move as drastically.

Higher density bonuses are needed in lower-income areas, while lower density bonuses are needed in higher-income areas. This reconciles with national findings: in many cases, higher-income areas can institute affordable requirements with little or no offset density bonus, while lower-income areas often struggle to enable the construction of market units, and thus imposing an affordable requirement would require high levels of offsetting incentives to induce development.

Presumptive Densities

Returning to the notion of presumptive densities, it is clear that the effectiveness of an incentive in offsetting the cost of the affordable housing requirement depends more on the change in density levels rather than on the density level itself. Said another way, the pro forma model, as currently constructed, does not focus on the inherent profitability of a project but rather on how an affordable housing requirement and then offsetting compensatory benefits affect that profitability. Thus, the question of whether a certain density level can be deemed sufficient for inducing construction can only be determined if the starting density is known, and so the pro forma model can only touch on the notion of presumptive densities, not answer it directly.

New Construction Versus Rehabilitation

The question of new construction versus rehabilitation, from the lens of the pro forma model, is a question of acquisition and construction costs. To the extent that all other variables are held equal, but a rehabilitation project is swapped in for a new construction project, the difference in profitability will be a function of the amount that the acquisition and construction costs differ.

[page=6189] This, too, is a comparison that can only be made on a case-by-case basis, and cannot easily be generalized, since acquisition and construction costs for rehabilitation projects vary widely depending on the existing value of the property and the depth of renovation that is needed. One additional and interesting wrinkle to this discussion is the vast number of existing incentive programs within the state that are in place to induce developers to choose existing sites and buildings for development rather than building anew in "greenfields." The existence of these incentives can, in many cases, not only narrow the usual difference in cost between new construction and rehabilitation but also, in some cases, make rehabilitation less costly, even factoring in the not uncommon presence of site remediation.

4.0 RECOMMENDATIONS FOR REGULATORY LANGUAGE

This report has been concerned primarily with providing guidance to the New Jersey Council on Affordable Housing (COAH) in determining what constitutes a "sufficient" set of incentives offered by a municipality to achieve its fair share of affordable housing requirements, as per the ruling of the Appellate Division of the Superior Court of New Jersey. To address this main topic, we have provided an inventory of incentive mechanisms (Section 2) and walked through an illustrative pro forma statement to understand the relative impact of various incentives under various scenarios (Section 3).

4.1 Sufficiency of Incentives

Having covered this terrain, we can now offer direct guidance on the notion of "sufficiency," and on related sub-topics that were first surfaced in Section 1. The advantage of a "presumptive density" lies in its simplicity, predictability, and record of success in producing affordable housing. Raw density levels are easy to determine, while changes in density levels require a more complicated calculation involving the weighting of various density levels in different parts of the municipality, in order to determine existing density levels.

Nevertheless, as has been covered previously, real estate markets are such that there may not be a density level that is necessarily sufficient to offset the cost of the affordable housing requirement. The presumptive density level, in other words, depends on a number of variables, most notably the existing density of the municipality, since it is the change in density and not the density level itself that is important.

As discussed previously, in practice many incentive programs around the nation have tended to combine density bonuses with other incentives, such as relaxation of various regulations that tend to lower construction costs. Most commonly, affordable units are allowed to be different in size and/or quality than market units, drastically lowering the cost of constructing them and thus reducing the amount of incentives needed to offset the loss to the developer in providing them. Therefore, in our analysis we make an important assumption that affordable units are half the size of market units, resulting in a construction cost reduction of approximately 40 percent per affordable unit.

Given that assumption, we find that the amount of incentives required to offset the affordable housing requirement depends on **a number of statewide policy decisions**, most notably the set-aside ratio, the affordability level, and the definition of a density bonus as allowing all additional units to be market versus as requiring that additional units retain the set-aside ratio. Again, these are policy choices that affect the scale of the cost of building affordable units and also of the effectiveness of different levels of offsetting incentives.

Importantly, the amount of incentives required to offset the affordable housing requirement also depends on **the proportion that land and other fixed costs contribute** to a typical project's total costs, to the extent that density bonuses work to offset the cost of building affordable units by spreading a project's fixed costs over more units. In particular, in extremely high-income municipalities, land costs can become a very high proportion of total project costs, thus necessitating relatively smaller density bonuses to offset; while in extremely low-income municipalities, land costs can become a very low proportion of total project costs, thus necessitating relatively higher density bonuses to offset.

In modeling an illustrative pro forma, we assume the lower-income, low land area scenario, which yields a higher density bonus needed to offset the affordable housing requirement: 35.9 percent if all bonus units are market units, or 58.0 percent if additional affordable units are built such that the original ratio of affordable units to market units is retained. Our illustrative scenarios thus use lower-income areas to determine what could be deemed a presumptive density increase that municipalities can offer to automatically obtain COAH certification. Certainly, though a higher-income area that offers a lower density increase would not receive automatic certification, its plan would likely be well received by COAH.

Finally, it is important to note that this analysis has concerned itself with the sufficiency of incentives. National and local experience suggests that **incentives do not need to be sufficient to be effective**. In other words, this analysis calculates the level at which an incentive completely offsets the affordable housing requirement; but a developer might be sufficiently motivated to build at incentive levels that are far lower, or in some cases with no offsetting incentive offered at all.

In short, this analysis is intended to offer guidance in framing regulatory language and in setting policy, by offering illustrative calculations that provide a framework for making such decisions. In its most recent ruling, the Court made it clear that municipalities must provide a "realistic opportunity" for affordable units to be developed, and it connected that responsibility with the concept of "sufficient" incentives. Thus, the above illustrative pro-forma statements offer some guidance for COAH to evaluate plans put forth by municipalities to that end.

4.2 Municipality Types

There can be a difficulty in setting a statewide rule in a state as diverse in its housing markets as New Jersey. Certainly, there is a wide variation in starting densities across the state, as well as in the relative attractiveness of the housing market, in terms of the usefulness of a certain scale of density bonus.

A simple yet useful way to get at this variation is to **compare a municipality's median house prices with equivalent construction costs.** In other words, determining how much more or less a house sells for in relation to how much it costs to build is an important indicator of the attractiveness of a municipality's housing market, relative to other municipalities. <32>

Efficient real estate markets mean that where house prices are high, land will be relatively expensive, and where house prices are low, land will be relatively cheap. To the extent that there is wide variation between municipalities in terms of the ratio between median prices and construction costs, this has implications for what constitutes a sufficient density bonus

Since construction costs do not vary nearly as much across the state as median house prices, higher-income municipalities will have price/cost ratios far greater than 1.0, while lower-income municipalities will have price/cost ratios less than 1.0. This simply constructed index thus offers some guidance in [page=6190] terms of classifying municipalities, so that a particular municipality's incentive plan can be evaluated based on whether it is a higher-income municipality (and thus does not need to offer as high of a density bonus) or a lower-income municipality (and thus needs to offer a higher density bonus).

4.3 Non-Residential Construction

Heretofore, we have discussed the application of incentives related to residential construction. However, non-residential construction also generates an affordable housing obligation, which poses a challenge to the extent that housing units cannot always be included at the same site, and non-residential developers may not have the expertise or desire to build residential units. Non-residential developers have heretofore then paid a development fee instead of directly bearing the cost of building affordable units. Would municipalities need to offer incentives to such developers? Density bonuses, the usual mechanism, could apply here in the form of increased floor area ratios (FAR), and **regulatory changes could reduce costs or increase value of construction and thereby encourage development, as could financial subsidies.**

However, such an analysis would have to be preceded by the resolution of a fundamental policy question concerning the need to offer incentives at all. The absence of incentives, after all, would simply mean a higher cost of locating a non-residential use within the state. This could possibly mean the loss of business, on the margins, as developers choose to site their non-residential developments outside state lines or not build them altogether. The alternative of offering

incentives is equivalent to spreading the cost across all taxpayers. Thus, it is a matter of policy preference first, whether the state seeks to offer incentives for non-residential construction or not.

To use some specific numbers, there is currently a 2 percent development fee levied on non-residential construction that does not build its own affordable housing. Given that construction costs and employment densities vary by building type, the actual cost of building an affordable unit ranges from 2.8 percent to 10.1 percent of the assessed value of non-residential construction (see Figure 4.1). <33>

| | Figure 4.1 – Cost of Affordable Housing as a Function of Non-Residential Construction | | | | | | | | | | | | |
|-----------------------------------|---|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Building Type | Office | Retail | Factory | Storage | Manuf | Theater | Retairant | Library | Arena | Stadium | K-12 | Hospital | Hotel |
| Sample # SF in Project | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 |
| Average \$ Constr Cost/SF | \$ 112.5 | \$ 157.6 | \$ 98.8 | \$ 84.8 | \$ 159.4 | \$ 151.7 | \$ 127.3 | \$ 134.6 | \$ 131.3 | \$ 1543 | \$ 152.2 | \$ 306.5 | \$ 233.7 |
| Total Sample Project Cost | \$ 11,252,510 | \$ 15,761,960 | \$ 9,477,960 | \$ 8,479,960 | \$ 15,944,850 | \$ 15,170,530 | \$ 12,727,920 | \$ 13,459,900 | \$ 13,131,620 | \$ 15,434,000 | \$ 15,218,920 | \$ 30,648,190 | \$ 23,367,170 |
| Approx. Project Cost/Market Value | 50% | 50% | 50% | 50% | 50% | 50% | 50% | 50% | 50% | 50% | 50% | 50% | 50% |
| Assessed Value/Market Value | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| Sample Project Assessed Value | \$ 22,505,020 | \$ 31,523,920 | \$ 18,955,920 | \$ 16,959,000 | \$ 31,889,700 | \$ 30,341,060 | \$ 25,455,840 | \$ 26,919,800 | \$ 26,263,240 | 30,868,000 | \$ 30,437,840 | \$ 61,296,380 | \$ 46,734,340 |
| Task 4 Jobs/1000 Gross SF | 2.6 | 1.6 | 1.1 | 1.3 | 1.4 | 1.5 | 2.9 | 1.5 | 3.1 | 2.3 | 1.6 | 2.3 | 1.6 |
| Jobs Created by Project | 259.4 | 156.4 | 111.7 | 134.7 | 143.4 | 146.4 | 293.3 | 147.3 | 312.8 | 234.6 | 156.4 | 234.6 | 156.4 |
| Jobs Per Affordable Unit | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 | 16 |
| # Affordable Units to be Built | 16.2 | 9.8 | 7.0 | 8.4 | 9.0 | 9.2 | 18.3 | 9.2 | 19.6 | 14.7 | 9.8 | 14.7 | 9.8 |
| \$ Cost Per Affordable Unit | \$ 135,735 | \$ 135,735 | \$ 135,735 | \$ 135,735 | \$ 135,735 | \$ 135,735 | \$ 135,735 | \$ 135,735 | \$ 135,735 | \$ 135,735 | \$ 135,735 | \$ 135,735 | \$ 135,735 |
| \$ Cost for All Affordable Units | \$ 2,200,397 | \$ 1,326,806 | \$ 947,719 | \$ 1,142,528 | \$ 1,216,239 | \$ 1,242,106 | \$ 2,487,762 | \$ 1,249,636 | \$ 2,653,613 | \$ 1,990,210 | \$ 1,326,806 | \$ 1,990,210 | \$ 1,326,806 |
| \$ Cost as a % of Assessed Value | 9.8% | 4.2% | 5.0% | 6.7% | 3.8% | 4.196 | 9,8% | 4.6% | 10.1% | 6.4% | 4.496 | 3.2% | 2.8% |

Source: Econosult Corporation (2007)

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[page=6192] **4.4** Payments in Lieu

Before the Court issued its opinion, COAH proposed revised regulations for payments in lieu, with the intention of addressing the main objection raised about the existing regulations. The objective of these new proposed regulations is to estimate the amount of subsidy needed in each COAH Region to produce an affordable housing unit to establish a basis for the required payments. As with development fees on non-residential construction, as a matter of policy, in cases where affordable units are not being directly built, but rather a payment in lieu is being made, no offsetting incentives would be provided.

We think these proposed regulations reasonably estimate the cost of providing affordable housing. However, the proposed formula assumes that construction costs do not vary across regions, although it does incorporate varying land costs and household income levels (see Figure 4.2).

Figure 4.2--Current COAH "Payment in Lieu of" Amounts

| COAH | 1st | Land | Constr | Soft | Total | AH | Req |
|--------|----------|-------|--------|-------|-------|-------|---------|
| Region | Quartile | Costs | Costs | Costs | Costs | Price | Subsidy |

| Blended | \$ 305,529 | \$ 76,382 | \$ 155,433 | \$ 18,545 | \$ 250,360 | \$ 89,265 | \$ 161,095 |
|---------|------------|-----------|------------|-----------|------------|------------|------------|
| 6 | \$ 264,690 | \$ 66,173 | \$ 155,433 | \$ 17,728 | \$ 239,334 | \$ 68,304 | \$ 171,030 |
| 5 | \$ 257,790 | \$ 64,448 | \$ 155,433 | \$ 17,590 | \$ 237,471 | \$ 79,784 | \$ 157,687 |
| 4 | \$ 343,725 | \$ 85,931 | \$ 155,433 | \$ 19,309 | \$ 260,673 | \$ 93,710 | \$ 166,963 |
| 3 | \$ 381,966 | \$ 95,492 | \$ 155,433 | \$ 20,074 | \$ 270,998 | \$ 110,921 | \$ 160,077 |
| 2 | \$ 255,000 | \$ 63,750 | \$ 155,433 | \$ 17,535 | \$ 236,718 | \$ 95,808 | \$ 140,910 |
| 1 | \$ 330,000 | \$ 82,500 | \$ 155,433 | \$ 19,035 | \$ 256,968 | \$ 87,065 | \$ 169,903 |

Source: New Jersey Council on Affordable Housing (2007)

COAH's current "Payment in Lieu of" calculations assume uniform construction costs across COAH Regions.

Construction costs are certainly more uniform across the state than house prices, due to the common drivers that affect such costs regardless of location. Nevertheless, such costs are not totally uniform, to the extent that there are minor differences in the cost of labor and materials in different parts of the state.

Using publicly available data from RS Means, we can determine these variations across municipalities, and then aggregate them to a COAH Region level. <35> Specifically, we take COAH's original \$ 155,433 construction cost across all COAH Regions and adjust upward or downward, depending on the relationship of the weighted average of all municipalities within a given COAH Region to the statewide average. Adding back other costs and then subtracting the affordable housing price gets us **the new required subsidy per unit by COAH Region**, which as the table below demonstrates, is anywhere from 9 percent lower to 7 percent higher than the original figures (see Figure 4.3). We recommend that COAH adopt these figures in its proposed regulatory language to account for these construction costs differentials across geography.

Figure 4.3--Adjusted Affordable Housing Subsidy Amounts

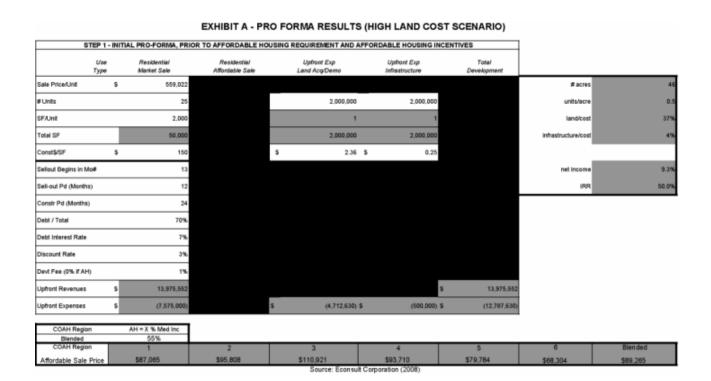
| COAH | 1st | Land | % of NJ | Constr |
|--------|------------|-----------|---------|------------|
| Region | Quartile | Costs | Avg | Costs |
| 1 | \$ 330,000 | \$ 82,500 | 107% | \$ 165,798 |
| 2 | \$ 255,000 | \$ 63,750 | 105% | \$ 163,206 |
| 3 | \$ 381,966 | \$ 95,492 | 91% | \$ 141,258 |

| Blended | \$ 305,529 | \$ 76,382 | 100% | \$ 155,433 |
|---------|------------|-----------|------|------------|
| 6 | \$ 264,690 | \$ 66,173 | 108% | \$ 167,262 |
| 5 | \$ 257,790 | \$ 64,448 | 98% | \$ 152,835 |
| 4 | \$ 343,725 | \$ 85,931 | 91% | \$ 140,697 |

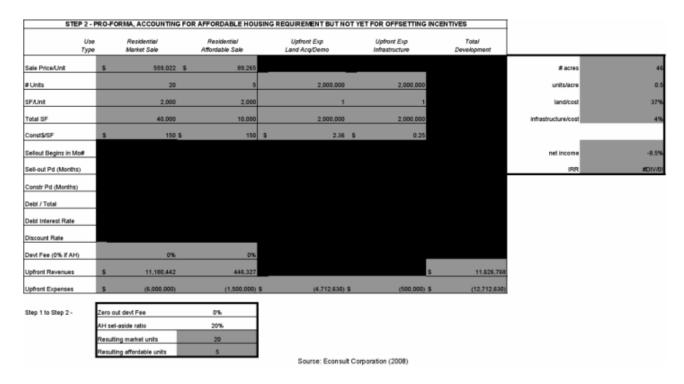
Source: Econsult Corporation (2007)

| COAH | Soft | Total | AH | Req | % of |
|---------|-----------|------------|------------|------------|----------|
| Region | Costs | Costs | Price | Subsidy | Previous |
| 1 | \$ 19,035 | \$ 267,332 | \$ 87,065 | \$ 180,267 | 106% |
| 2 | \$ 17,535 | \$ 244,491 | \$ 95,808 | \$ 148,683 | 106% |
| 3 | \$ 20,074 | \$ 256,824 | \$ 110,921 | \$ 145,903 | 91% |
| 4 | \$ 19,309 | \$ 245,937 | \$ 93,710 | \$ 152,227 | 91% |
| 5 | \$ 17,590 | \$ 234,873 | \$ 79,784 | \$ 155,089 | 98% |
| 6 | \$ 17,728 | \$ 251,163 | \$ 68,304 | \$ 182,859 | 107% |
| Blended | \$ 18,545 | \$ 250,360 | \$ 89,265 | \$ 161,095 | 100% |

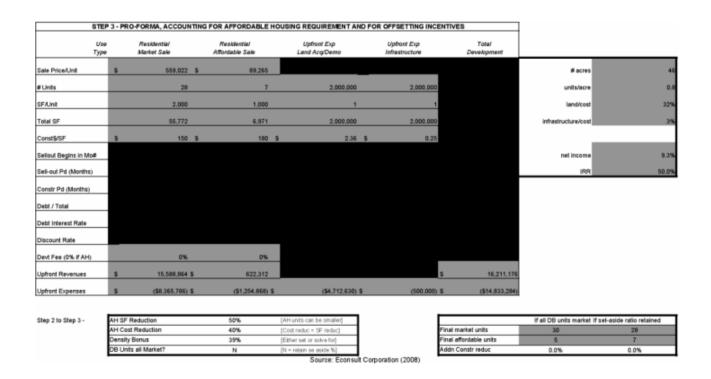
Source: Econsult Corporation (2007)



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[page=6196] EXHIBIT B--PRICE/COST INDEX METHODOLOGY AND RESULTS

The supply of housing in a municipality, whether affordable or market rate, is a function of the risk-adjusted returns relative to other possible investments. In this Appendix, we seek to **categorize municipalities according to their relative attractiveness to developers**, based on the relationship between house prices and construction costs. In this way, we can attempt to quantify the variations across COAH Regions related to affordable housing provision.

Perhaps the most significant indicator of the strength of a municipality's residential real estate market is **the relationship between market prices and construction costs.** In the simplest terms, if housing prices exceed construction costs, then new housing units might be produced, while if prices are less than costs, definitely no new supply will be built. <36>

If we can estimate construction costs by municipality, we can compare each to the local housing prices. Therefore, we look at costs and prices per SF of constant quality units.

- 1) Look at market prices for all houses instead of new ones
- 2) Normalize house prices by median number of bedrooms based on census info
- 3) Use the free apartment construction index from RS Means for an x bedroom apartment <37>

On the price side, we divide out by number of rooms, which is available via US Census data; and on the cost side, we look up the construction cost for apartments. This is a relatively approximate method, in that it does not compare like products across municipalities, since age and size of housing stock varies from municipality to municipality. Nevertheless, this approach does get at degrees of unattractiveness reasonably well, by giving an indication of how far from construction costs the average market price is. These results can be determined at a municipal, county, or COAH Region level (see Figure B.1).

Figure B.1--Price/Cost Index Results, by COAH Region

| | County | Price/Cost |
|--------|-------------|--------------|
| | Price/Cost | Ratio-Medium |
| COAH | Ratio-Low | Ratio-Medium |
| Region | Const. Cost | Const. Cost |
| 1 | 2.53 | 2.26 |
| | | |
| 2 | 2.50 | 2.25 |
| | | |
| 3 | 1.91 | 1.72 |
| | | |
| 4 | 1.91 | 1.72 |

| 5 | 0.90 | 0.81 |
|---|------|------|
| 6 | 1.61 | 1.45 |

Source: Econsult Corporation (2007)

There are other, more complex ways to approach this comparison, but at this stage we are merely interested in an easily computable index that uses free and public data. In fact, this simple index has the nice benefit of being easy to understand, in that any number below 1.00 signifies that market prices are below construction costs, and any number above 1.00 signifies that market prices are above construction costs. <38>

<1> An extensive literature and best practices review was conducted by Applegate and Thorne-Thomsen to inventory these various mechanisms, and to highlight their use and effectiveness around the country.

<2> The Appellate Division of the Superior Court of New Jersey in the matter of the adoption of N.J.A.C. 5:94 and 5:95 by COAH (January 25, 2007), p. 103.

<3> The extent of filtering and its capacity to address low-moderate income needs was also questioned by the Court, and is the subject of Task 2 of this overall effort.

<4> Montgomery County, Maryland website.

<5> City of Boston website.

<6> Note that with reduced value associated with building housing, more land will be used for other purposes, and less land will be used for housing, all else equal.

<7> To the extent that land prices drop below this level, then some of the landowners' losses are due to reduced housing production. This is because the amount of economically developable land will be reduced as its return for that use is reduced.

<8> This discussion deals with a market in which a restriction (i.e. the affordable housing requirement) is imposed, and incentives are then offered. The first action, imposing the affordable housing requirement, lowers demand for development, and hence both prices and land consumed for residential development will tend to fall. The second action, making offsetting incentives available, reverses this effect, mitigating some or all of the effects of lower demand. This is true whether one tends to believe the original price or the post-requirement price is the more "efficient" price.

[[]page=6197] <9> Capitalization occurs in an asset whenever there is a change in a characteristic or attribute related to the asset. These can be positive or negative changes; if the former, the asset becomes more attractive, increasing demand for the asset, which in turn increases its market price. A similar story, with effects in the opposite direction, occurs if a negative change or characteristic is introduced.

<10> See *Building Industry Association: Philadelphia Tax Abatement Analysis*, Econsult Corporation (September 2006), in which it was proven that the ten-year property tax abatement in Philadelphia has induced a significant

proportion of the new construction that took place subsequent to the existence of the abatement.

- <11> This may be even more likely in states like New Jersey, where demand for open space is fairly strong, and the "border" between residential use and non-development is very responsive to prices.
- <12> COAH's Second Round Rules, for example, set six units per acre as a presumptive density, which meant that municipalities that offered that incentive were presumed to have created a realistic opportunity for the construction of affordable housing within the municipality.
- <13> This assumes, as discussed previously, that the supply of developable land is not totally fixed. In other words, if there is no ability to add or subtract to the amount of developable land, then it is alternatively possible that the introduction of an affordable housing requirement will lead to a reduction in land prices, such that from the developer's standpoint, there is no difference in profitability (i.e. the added cost of having to build affordable units is completely offset by the lower land acquisition cost).
- <14> Note that while large lot size zoning may reduce the value of land per acre, it also may result in higher priced housing, as wealthier owners put larger, more luxurious housing on the land.
- <15> Metro website.
- <16> Note that as discussed previously, by making the land more desirable for development, the price of land will rise, offsetting some of the positive incentive for development.
- <17> Note that by structuring fiscal incentives such that they are only available with the construction affordable housing, it is more likely that the incentive will result in additional housing production rather than simply increases in land prices.
- <18> Bay Area Homeless Alliance website.
- <19> City of Madison website.
- <20> Portland Development Commission website.
- <21> So long as all of the accompanying assumptions are proportionate, these results are independent of the size of the project, and would be identical for a much smaller project or a much larger project.
- <22> Key initial assumptions include the following:
- Houses will be 2000 square feet in size.
- -- Construction costs will be \$ 150 per square foot, inclusive of both hard and soft costs.
- -- The construction will take 24 months, with the first houses completed and ready for sale halfway through the construction period.
- -- The houses will sell out over a 12-month period, and thus all houses will have been sold by the completion of the construction period.
- -- Seventy percent of the project cost will be raised via debt at a 7 percent interest rate, and the other 30 percent is in the form of equity.

- -- The interest on the debt will be capitalized during the construction period.
- -- Loan proceeds are drawn down as needed and paid back as houses are sold.
- -- Inflation will be three percent.
- -- A development fee of 1 percent will be assessed, but is waived if affordable units are built.
- <23> Controlling for the income level of residents and the market price of for-sale units, land cost as a proportion of total project costs is a ratio that tends to hold relatively constant across high-density and low-density locations. The higher the density of a site, the more profitable the development potential for that site, and therefore the higher the land price; but this is offset by the fact that higher-density sites require less land per unit. The same holds true for lower-density sites: land prices are lower, but more land needs to be purchased per unit.

Importantly, land cost as a proportion of total project costs is not relatively constant as one considers higher-income and higher-priced sites, or conversely lower-income and lower-priced sites. As we discuss later in this section, it is possible for land costs to deviate significantly as a proportion of total project costs, and when they do, such sites require fundamentally different density bonus levels to offset the cost of building affordable units.

- <24> Infrastructure costs are relatively constant as a proportion of total project costs, although it is likely that they are more prone than land costs to move up or down as a proportion of total project costs when comparing high-density versus low-density sites. It is also hard to generalize if infrastructure costs are truly unchanged as units are added, as it is possible that costs could increase if additional systems need to be installed on a per-unit basis, or alternatively that costs could actually decrease if higher densities necessitate less linear feet of roads and thus less road material.
 Nevertheless, to the extent that this is simply an illustrative pro-forma, we will simply assume that this proportion is fixed for the purposes of this exercise.
- <25> To size this project to a typical New Jersey development, we assume the development site is 2 million square feet, or about 46 acres; thus, the initial density for the development is about 0.5 units per acre. Additional assumptions for costs associated with acquisition, demolition, and infrastructure yield acquisition and demolition costs of about \$ 3 million and infrastructure costs of about \$ 500,000 out of a \$ 11 million project cost.
- <26> These levels represent a starting point in the pro forma model: affordable housing requirements then lower returns, and the exercise at hand is to determine the amount of incentives required to return to those original levels. Importantly, if these starting levels are set to be lower or higher, the [page=6198] ensuing results do not materially change; in other words, the assumed baseline profitability and return levels do not alter the amount of incentives needed to offset the affordable housing requirement.
- <27> This figure represents an average across all COAH regions.
- <28> Bear in mind that, in addition to the introduction of the affordable housing requirement, a second difference in the second sheet is the removal of development fees.
- <29> A 20 percent density bonus is modeled here because a 20 percent set-aside ratio is assumed, and thus this level of incentive represents a "one for one" density bonus: one additional unit for every initially required affordable unit. For the purposes of this illustrative scenario, we assume that all additional units are market units. Thus, a 20 percent density bonus defined in this way would mean that the project would go from 100 market units (Step 1) to 80 market units and 20 affordable units (Step 2) to 100 market units and 20 affordable units (Step 3), or one bonus market units for every affordable unit required.

- <30> Again, this illustrative pro forma model assumes land costs are 26 percent of total project costs, the lowest land to project cost ratio among COAH regions. See Exhibit A for pro forma results modeled at 37 percent of total projects, the highest land to project cost ratio among COAH regions. Results for these two land cost to project cost ratios are shown simply to demonstrate the relative differences in offsetting incentives needed; there are certainly instances across municipalities and even across projects within a municipality in which such ratios can vary quite significantly.
- <31> Alternatively, one could compare a municipality with itself: the municipality at one point in time, versus a different point in time after it had experienced material changes in density and/or income levels.
- <32> See Exhibit B for a description of a price/cost index methodology and for results of these calculations at the COAH Region level.
- <33> These estimates make the following assumptions:
- -- Construction costs are based on estimates obtained from RS Means' free online cost estimator.
- -- Project costs are assumed to be 50 percent of market value, while assessed value is equal to market value in New Jersey.
- -- Employment density uses figures determined by building type for employees per 1000 gross square feet from other recent work performed for COAH by Econsult Corporation.
- -- We assume a revised ratio of one affordable unit required for every 16 jobs created.
- -- Our subsidy per affordable unit is calculated as follows: 2000 square feet per unit, times \$ 150 construction cost per square foot, minus 40% cost savings by halving the size of the affordable units, plus+ land costs at 20 percent of total project costs, minus \$ 89,265 (affordable price for 55 percent of median income).
- <34> We use the same data as described and depicted in Exhibit B.
- <35> If we consider land value as a residual, then housing prices would have to exceed construction costs by at least the value of the next best use (opportunity cost) of the land. Note that one "use" of the land is to hold it speculatively in anticipation of higher future prices.
- <36> RS Means gives a low, medium, and high estimates; we have chosen to display separate results for low and medium.
- <37> We note that communities with low priced homes and no new homes will fall at the bottom, and communities with higher priced old homes and significant numbers of new homes will fall near the top. We are only interested in the ordering. We group communities as high, median and low prices relative to construction costs. This provides an indication of which communities are unlikely to see development--especially with added burdens.

We also note that problems arise when one tries to compare construction costs (new houses) with sales prices (varying degrees of house age, with some municipalities having generally older stock than others). Also, we are not able to compare on a per SF basis, because that data is not always available. On the cost side, RS Means' online calculator is not free for residential construction aside from apartments.

Finally, there is a danger in putting too much weight into these specific numbers, to the extent that they represent data from one point in time, a time that happens to be experiencing greater than normal volatility on both the price and cost

side: prices have soared and are now declining, while construction costs have increased faster than historical growth rates.

Despite these shortcomings, this simple index achieves what we are seeking, namely a reasonable approximation of the relative degree of attractiveness to build, from municipality to municipality.